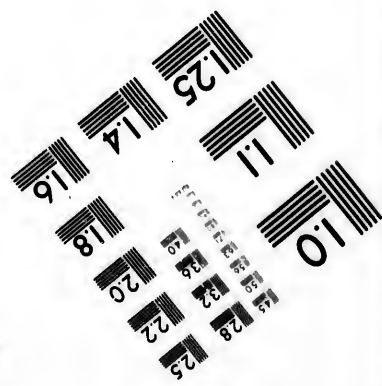
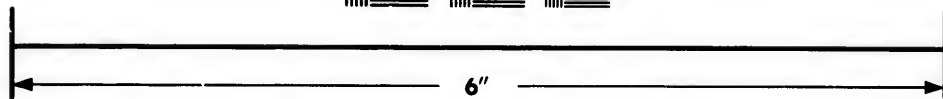
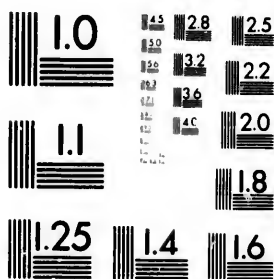


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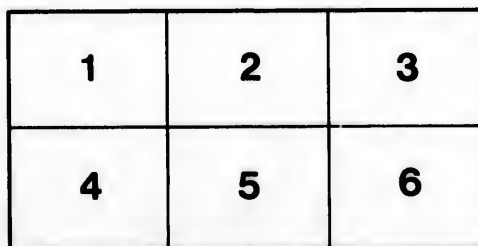
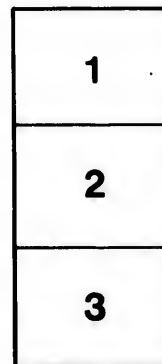
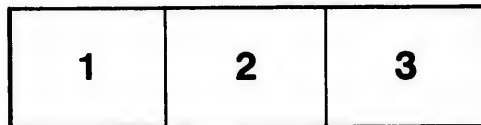
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A CATECHISM
ON
MILITARY LAW

AS APPLICABLE TO THE
MILITIA OF CANADA,

CONSISTING OF
QUESTIONS AND ANSWERS

ON
THE MILITIA ACT, 1883; RULES AND REGULATIONS FOR THE
MILITIA, 1883; THE ARMY ACT, 1881; RULES OF PRO-
CEDURE, 1881; QUEEN'S REGULATIONS, 1883:

TOGETHER WITH A COMPILATION OF THE
PRINCIPAL POINTS OF THE LAW OF EVIDENCE.

BY
MAJOR PENNINGTON MACPHERSON,
GOVERNOR GENERAL'S FOOT GUARDS.

EXAMINED AND APPROVED BY
Major-General **SIR FREDERICK MIDDLETON, K.C.M.G.**

Montreal:
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1886.

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TO THE

Honorable Sir Adolphe E. Caron,

K.C.M.G.,

MINISTER OF MILITIA AND DEFENCE,

THIS VOLUME IS (BY SPECIAL PERMISSION) RESPECTFULLY
DEDICATED, AS A SMALL TOKEN OF APPRECIATION FOR THE
ENERGY, ZEAL AND ABILITY DISPLAYED IN THE PERFORMANCE
OF THE RESPONSIBLE DUTIES OF HIS HIGH POSITION DURING
THE MOST CRITICAL AND EVENTFUL PERIOD THAT HAS EVER
OCCURRED IN THE HISTORY OF THE DOMINION OF CANADA,

BY HIS VERY OBEDIENT SERVANT,

THE AUTHOR.

ABBREVIATIONS USED.



- C. O. . . . Commanding Officer.
- C. M. . . . Court Martial.
- N. C. O. . . Non-Commissioned Officer.
- M. A. 10. . . Section 10, Militia Act.
- R. & O. 14. Paragraph 14, Regulations and Orders, 1883.
- A. A. 5. . . Section 5, Army Act, 1881.
- R. O. P. 4. Rule 4, Rules of Procedure, 1881.
- Q. R. VI. 24. Paragraph 24, Section 6, Queen's Regulations, 1883.
- M. M. L. . . Official Manual of Military Law.

PREFACE.



My own experience of the difficulties attending the study of Military Law, as applicable to the Militia of Canada, has led me to believe that a work on the subject would be welcomed by my brother officers and the members of the force generally.

It is a heavy task for the student to master such large volumes as the Queen's Regulations, the Army Act and Rules of Procedure, or to extract from them the information of which he is in search. These books cover every conceivable point that could possibly arise in every branch of the British Army and in every part of the globe in which it may be quartered, and consequently much of their contents do not apply in Canada.

There are in England many works on the subject; of great merit and of a scope far beyond that at which I aim, but these, of necessity, present much the same features as the books on which they are founded, and do not, of course, contain any reference to our own Militia Act, or Regulations and Orders, which is the first authority we are required to obey.

My object has been to present, in the form of a simple and concise Catechism, those portions of the

law which every officer ought to know, and which he might find himself called upon to administer.

Beside each question I have given the authority for the answer, so that the reader may turn up the original, should he require confirmation or further information.

I have confined myself as much as possible to the above mentioned authorities, but where they did not cover the points I desired to bring forward, I have availed myself of the admirable works of Major Gorham and Major Sisson Pratt. The chapter on Evidence has been compiled from "Taylor on Evidence."

In conclusion, I desire to express my grateful thanks to Major-General Sir Frederick Middleton for the time spent and trouble taken in minutely examining the manuscript of the work previous to publication, and for the valuable suggestions in connection therewith which his great practical experience enabled him to give.



MILITARY LAW.

CHAPTER I.

INTRODUCTORY.

Q. 1. What is Military law ?

Military law
defined.

A. Military law, as distinguished from Civil law, is the law relating to and administered by Military Courts, and concerns itself with the trial and punishment of offences committed by officers, soldiers, and other persons (*e. g.*, sutlers and camp followers), who are, from circumstances, subjected, for the time being, to the same law as soldiers.

Q. 2. What necessity is there for Military law, apart from Civil law ?

Necessity for,
apart from
Civil law.

A. To enable the Military authorities to deal with offences which it would be inexpedient to leave to the Civil authorities. Many acts and omissions, which are mere breaches of contract in Civil life—*e. g.*, desertion or disobedience to orders—must, if committed by soldiers, even in time of peace, be made crimes, with penalties attached to them; while, on active service, any act or omission which impairs the efficiency of a man in his character of a soldier must be punished with severity.

Martial law
defined.

Q. 3. What is Martial law ?

A. Martial law, as distinguished from Military law, and the customs of war, is unknown to English jurisprudence. It is so arbitrary and uncertain in its nature that the term "law" cannot properly be applied to it. According to the Duke of Wellington, "it is neither more nor less than the will of "the general that commands the army. In fact "Martial law is no law at all ; therefore the general "who declares Martial law, and commands that it "should be carried into execution, is bound to lay "down the rules, regulations and limits, according "to which his will is to be carried out." It may therefore be defined to be—*sway exercised by a military commander over all persons, whether civil or military, within the precincts of his command, in places where there is no civil judicature or where such judicature has ceased to exist.*

When it would
be in force.

Q. 4. In what three cases would Martial law be in force ?

- A. 1st. In the case of a conquered country.
2nd. Of a country or district formally put under Martial law by Act of Parliament.
3rd. When, under circumstances of imminent danger, the Executive proclaims Martial law in a district.

Effect of pro-
clamation of
martial law.

Q. 5. What is the effect of a proclamation of Martial law in a district ?

A. It is a notice to the inhabitants that the Executive Government has taken upon itself the responsibility of superseding the jurisdiction of all the

ordinary tribunals for the protection of life, person and property, and has authorised the Military authorities to do whatever they think expedient for the public safety.

Q. 6. Of how many parts does Military law consist? Military Code.

A. It consists of two parts—

(a.) Written.

(b.) Unwritten, or customs of war.

Q. 7. Of what does the written part consist, as applicable to the Militia of Canada? Written.

A. 1. The Militia Act.

2. The Regulations and Orders for the Militia.

3. The Imperial Army Act.

4. All other laws applicable to Her Majesty's troops in Canada and not inconsistent with the Militia Act, except that no man shall be liable to any corporal punishment, except death or imprisonment, for any contravention of such laws.

5. The Queen's Regulations.

Q. 8. Upon what is the unwritten part of Military law founded? Unwritten.

A. It is founded upon the established customs of the army as ascertained by decisions given by competent authority.

CHAPTER II.

THE MILITIA ACT, AND REGULATIONS AND ORDERS
FOR THE MILITIA.**Service and Enrolment.**

M. A. 7.
Period of service.

Q. 9. What is the period of service in the Active Militia of Canada ?

A. Three years.

M. A. 9.
Notice of retirement.

Q. 10. What notice is required from officers and men of the force before they are permitted to retire ?

A. In time of peace six months notice is necessary.

M. A. 18.
Service roll,
oath of allegiance.

Q. 11. What is every militiaman required to do on joining the force ?

A. To sign a service roll, in which the conditions of his service are stated, and every officer on appointment, and every man on enlistment is also required to take the oath of allegiance.

M. A. 18.
Administration of oath.

Q. 12. By whom is this oath administered ?

A. By the commanding officer of the troop, battery, company or battalion, as the case may be.

Care of Arms.

M. A. 39.
Responsibility for arms.

Q. 13. Who is responsible for articles of public property which have become deficient or damaged while in possession of a corps, otherwise than

through fair wear and tear or unavoidable accident?

A. The officer in command, who, in turn, can recover the value from the officer or man who may be responsible for the same.

Q. 14. How are the arms, accoutrements and equipments of a corps to be kept?

M. A. 41.
How public property is to be kept.

A. In public armories where there are such, and where there are no such armories, the officer commanding each corps shall himself actually keep them in a good and sufficient building provided with suitable arm-racks and provision for the care thereof, for which he may be allowed such sum as may appear proper for the same.

Q. 15. What is the allowance for the care of arms and stores of a corps where there is no public armory?

R. & O. 335.
Allowance for.

A. Forty dollars per company per annum and sixty dollars per troop of cavalry per annum.

Q. 16. What certificate is necessary before this allowance will be paid?

R. & O. 336.
Certificate necessary before payment.

A. A certificate from the district staff officer to the effect that there are no deficiencies of arms or accoutrements in the stores of the company for which the captain or other officer commanding is responsible, or, if any exist, that they have been satisfactorily accounted for.

Q. 17. What may be done when deficiencies exist and which are not satisfactorily accounted for?

R. & O. 336.
When deficiencies exist.

A. A reissue may be made, on requisition, and the value thereof charged against the allowance for care of arms.

Penalties and Prosecutions.

M. A. 42.
Penalty for
embezzlement
of arms.

Q. 18. What is the penalty for a man leaving Canada and failing to return all articles of public property which he may have in his possession?

A. He is guilty of embezzlement, and may be tried for the same at any subsequent time.

M. A. 42.
Evidence of
possession.

Q. 19. What is evidence of his possession of such articles?

A. A record in the books of his corps of his having so received and not having returned them.

M. A. 64.
Limitation of
time for trial.

Q. 20. Within what time after his discharge from the active militia is a man liable to be tried for an offence committed during his period of service?

A. At any time with'n six months, except for the crime of desertion, for which he may be tried at any time, without reference to the period which may have elapsed since his desertion.

M. A. 67.
Desertion.

Q. 21. What constitutes the crime of desertion when called out for active service?

A. Absence without leave for a longer period than seven days.

M. A. 80.
Not attending
parade.

Q. 22. What is the penalty for neglecting or refusing to attend any parade or drill or training, or neglecting or refusing to obey any lawful order at or concerning such parade, drill or training?

A. Officers incur a penalty of ten dollars and men incur a penalty of five dollars for each offence, and absence for each day is held to be a separate offence.

Q. 23. What penalty is there for interrupting or hindering any militia at drill or trespassing on the bounds set out by the proper officer for such drill?

M. A. 80.
Hindering
militia at drill.

A. The offender incurs a penalty of five dollars for each offence, and may be taken into custody and detained by any person by the order of the commanding officer until such drill be over for the day.

Q. 24. What is the penalty provided for disobedience of orders or improper conduct?

M. A. 80.
Disobedience
of orders.

A. Any officer or man disobeying any lawful order of his superior officer or being guilty of any insolent or disorderly behavior towards such officer, incurs a penalty, if an officer, of twenty dollars, if a man of the militia, of ten dollars, for each offence.

Q. 25. Is a militiaman obliged to keep in order the arms and accoutrements entrusted to him?

M. A. 81.
Failing to keep
arms in order.

A. Yes; any militiaman who fails to keep in proper order any arms or accoutrements delivered or entrusted to him, or who appears at drill, or parade, or on any other occasion, with his arms or accoutrements out of proper order, or unserviceable, or deficient in any respect, incurs a penalty of four dollars for each such offence.

Q. 26. What punishment is provided for unlawfully disposing of arms or accoutrements or refusing to deliver them up?

M. A. 81.
Unlawfully
disposing of
arms, &c.

A. Any person who unlawfully disposes of or removes any arms, accoutrements or other articles belonging to the Crown or corps, or who refuses to deliver up the same when lawfully required, or has the same in his possession, except for lawful cause,

incurs a penalty of twenty dollars for each offence ; but this does not prevent the offender from being indicted and punished for any greater offence if the facts amount to such.

M. A. 84.
Penalties
generally.

Q. 27. Where there is no penalty specified for contravening any enactment of the Militia Act, what provision is made ?

A. Where no other penalty is imposed an offender incurs a penalty not exceeding twenty dollars for each offence ; but this does not prevent his being indicted and punished for any greater offence if the facts amount to such.

M. A. 85.
How recover-
able.

Q. 28. How are penalties under the Act recoverable ?

A. All penalties are recoverable with costs, by summary conviction, on the evidence of one credible witness, on complaint or information before one Justice of the Peace ; and in case of non-payment of the penalty, immediately after conviction, the justice may commit the person so convicted to the common jail or to some house of correction or lock-up house, for a period of not more than forty days when the penalty does not exceed twenty dollars, or more than sixty days when it exceeds that sum.

M. A. 86.
Prosecutions
against officers.

Q. 29. By whom are prosecutions against officers to be brought ?

A. By the officer commanding the militia or some officer duly authorized by him.

M. A. 86.
Prosecutions
against men.

Q. 30. By whom are prosecutions against men of the militia to be brought ?

A. By the commanding officer or adjutant of the corps, or captain of the company to which such man belongs.

Notices and Orders.

Q. 31. Is it necessary that any order or notice under the Militia Act be in writing? M. A. 91.
Notices and orders.

A. Not unless specially required by the Act to be so, provided it be communicated to the person who is to obey or be bound by it, either directly by the officer or person making or giving it, or by some other person by his order.

Q. 32. What is considered sufficient notice of militia orders issued through or by the adjutant general? M. A. 92.
Orders by adjutant general.

A. Their insertion in the *Canada Gazette*.

Q. 33. What is sufficient notice of orders made by the commanding officer of any corps of militia? M. A. 93.
Orders by commanding officer.

A. All such orders shall be held to be sufficiently notified to all persons whom they may concern by insertion in some newspaper published in the regimental division, or, if there be no such newspaper, by posting a copy on the door of every place of public worship, or of some other public place, in each company division affected by such orders.

Aid to Civil Power.

Q. 34. When are the Active Militia liable to be called out in aid of the civil power? M. A. 27.
When militia may be called out.

A. When a riot, disturbance of the public peace, or other emergency occurs, or is, in the opinion of the civil authorities, anticipated as likely to occur,

and to be beyond the powers of the civil authorities to suppress, prevent or deal with.

M. A. 27.
By whom.

Q. 35. By whom are they called out?

A. By the senior officer present in the locality.

M. A. 27.
Authority for.

Q. 36. What is his authority for doing so?

A. A requisition in writing from the chairman or custos of the Quarter Sessions of the Peace, or from any three magistrates, of whom the mayor, warden or other head of the municipality or county may be one.

R. & O. 642.
Not to go out
without.

Q. 37. May an officer go out with militia in aid of the civil power without such requisition in writing?

A. No.

R. & O. 645.
No discretion-
ary power.

Q. 38. Have officers any discretionary power as to the necessity of aid?

A. No; and any officer would incur a grave responsibility if he failed to afford aid when required to do so.

R. & O. 643.
Duty of senior
officer.

Q. 39. In cases where aid is applied for, what is the duty of the senior officer to whom the requisition is addressed?

A. To notify the D. A. G. of the district *by telegram* for transmission to headquarters, or, if the requisition is addressed to the D. A. G. of the district, he will immediately notify the adjutant general at headquarters by telegram.

M. A. 27.
What the re-
quisition must
show.

Q. 40. What is every such requisition to express?

A. The actual occurrence of a riot, disturbance or emergency, or the anticipation thereof,

Q. 41. When so called out, what are officers and men considered to be ?

M. A. 27.
To be special constables.

A. Special constables, but they act only as a military body, and obey only the orders of their commanding officer.

Q. 42. What is the penalty for an officer or man of the militia refusing to go out with his corps when called upon to act in aid of the civil power, or refusing to obey the lawful orders of his superior officer ?

M. A. 82.
Penalty for refusing to go out.

A. Officers incur a penalty not exceeding one hundred dollars, and men incur a penalty not exceeding twenty dollars for each offence.

Q. 43. When the Active Militia are so called out what is the duty of the officer in charge ?

M. A. 27.
R. & O. 648.
Duty of officer in charge.

A. To obey such instructions as are lawfully given him by any magistrate in regard to the suppression of such riot or disturbance. He is to take care that the men under his command march in regular military order, with the usual precautions, and that they are not scattered, detached, or posted in a situation where they may not be able to act in their own defence. The magistrate is to accompany the force, and the officer is to remain near him.

Q. 44. How is the detachment to be told off ?

R. & O. 649.
Detachment to be told off.

A. If under twenty files, into four sections ; if more than twenty files, into more sections than four.

Q. 45. By whom are all commands to the men to be given ?

R. & O. 650.
Commands to the men.

A. By the officer in charge. They are not on any account to fire, except by word of command of

their officer, who is to exercise a humane discretion respecting the extent of the line of fire.

R. & O. 650.
Responsibility
for firing.

Q. 46. May the officer in charge give the command to fire on his own responsibility?

A. No; he is not to give the command, *unless distinctly required to do so by the magistrate.*

R. & O. 651.
People to be
warned.

Q. 47. In order to guard against all misunderstanding, what are officers employed in the suppression of riots, &c., required to do?

A. To take the most effectual means, in conjunction with the magistrates, to explain beforehand to the people that, in the event of the men being ordered to fire, their fire will be effective.

R. & O. 652-3.
Fire, how
regulated.

Q. 48. How is the fire to be regulated?

A. If the commanding officer should be of opinion that a slight effort would suffice to attain the object, he is to give the command to one or two specified files to fire. If a greater effort should be required he is to give the command to one of the sections to fire; the fire of the other sections being kept in reserve till necessary. When there are more officers than one, the commanding officer will clearly indicate to the men what officer is to order any number of the sections to fire:—such officer to receive his directions from the commanding officer, after the latter shall have received the requisition of the magistrate to fire.

R. & O. 654.
When to cease.

Q. 49. When is the firing to cease?

A. The instant it is no longer necessary, whether the magistrate may order the cessation or not. Care is to be taken not to fire upon persons separated from

the crowd. It is to be observed that to fire over the heads of a crowd engaged in an illegal pursuit would have the effect of favoring the most daring and guilty, and might have the effect of sacrificing the less daring and even the innocent.

Q. 50. When is the force to be withdrawn from duty ? R. & O. 656.
Withdrawal
of force.

A. When notified by the magistrate or magistrates who signed the requisition, or a majority of them, that the services of the force are no longer required.

Q. 51. What is the duty of the commanding officer on completion of the duty ? M. A. 27.
R. & O. 657.

A. To make an immediate report thereof, in writing, to the deputy adjutant general of the district for transmission to headquarters, and also to prepare a pay list specifying the several sums authorized by law in respect to the service, and cause the value thereof to be paid by the municipality. Duty of commanding officer
to recover
charges.

Q. 52. Pending payment by the municipality, is there any provision for advancing the money ? M. A. 27.
Advance of.

A. Yes, the amount may be advanced by the Government on an Order in Council.

Q. 53. In case of a riot obstructing the conveyance of the mails by railway, how is the expense borne ? M. A. 27.
When riot not
local or provin-
cial.

A. Where the disturbance is not local or provincial in its origin, and it appears unjust that the municipality should bear the whole expense, the Governor in Council is empowered to pay such part as may seem just and expedient.

Actual Service.

M. A. 60.
Who may call
out militia for
actual service

Q. 54. In case of any sudden emergency of invasion or insurrection, or imminent danger of either, who is empowered to call out the militia ?

A. The officer commanding any military district or division, or the officer commanding any corps of Active Militia.

M. A. 61.
When militia
may be called
out.

Q. 55. When may the militia be called out for active service ?

A. Her Majesty may call out the militia or any part thereof for active service either within or without the Dominion, at any time when it appears advisable so to do, by reason of war, invasion or insurrection, or danger of any of them.

M. A. 61.
For what
period.

Q. 56. For what period are militiamen, when so called out, required to serve ?

A. At least one year.

M. A. 61.
Command of.

Q. 57. Under whose orders may they be placed ?

A. The commander of Her Majesty's regular forces in Canada.

M. A. 67.
R. & O. 662.
Penalty for
refusing to
turn out.

Q. 58. What is the penalty for refusal to turn out when warned for actual service ?

A. All regularly enrolled militiamen who refuse or neglect to turn out with their corps, when so warned, are liable to be tried by court martial for such refusal or neglect, which amounts to desertion.

M. A. 61.
Other
occasions.

Q. 59. Under what other circumstances are the Active Militia liable to be called out for active service ?

A. To act as guards of honor, escorts, or as guards and sentries, or to fire salutes.

Q. 60. In time of war how long are men required to serve continuously in the field ? M. A. 62.
Service in the field.

A. For a period not longer than one year, except in cases of unavoidable necessity, when they may be required to serve for a further period of six months.

Q. 61. What are the duties of a commanding officer of a corps when placed on actual service ? R. & O. 665-66.
Duties of commanding officer when placed on actual service.

A. (a) To notify, or cause to be notified, the men under his command, and, after the first parade, to forward to the deputy adjutant general of the district an exact return of his strength in officers and men.

(b) To require the paymaster to draw up a nominal roll of the men under his command, with a column of remarks, which shall show when any man became non-effective.

(c) To personally ascertain, at the first muster parade, that each man is in possession of the necessary articles of equipment, namely :

1 rifle with small stores complete.

1 set of accoutrements capable of carrying at least 60 rounds.

1 knapsack and straps complete, or great coat straps if knapsacks have not been issued, with canteen.

1 havresack.

60 rounds of ball ammunition.

1 water bottle.

1 great coat.

And also the following articles to be provided by the men themselves and carried in their knapsacks.

1 change shirt, flannel or cotton.

1 do pair socks.

1 do boots or shoes.

Needles and thread.

Knife.

Piece of soap.

Towel.

R. & O. 667.
Baggage.

Q. 62. When a corps placed on actual service is ordered away from its permanent headquarters are the men allowed to take with them any articles of baggage?

A. No; nothing beyond their knapsacks, if the corps be furnished with them. The prime necessities of a soldier on service, supposing him to be otherwise properly equipped, are food, boots and ammunition.

R. & O. 674.
Marching-in
state.

Q. 63. What is the duty of a commanding officer when his corps arrives at the end of its journey?

A. To send to the district staff officer a "*marching-in state*."

R. & O. 672.
Relief of
corps.

Q. 64. When a corps is relieved from actual service what is the commanding officer directed to do?

A. To take all articles of public property into store, and to forward a return to the district staff officer which shall show in one column the articles received, in a second, articles in possession, and in a third the cause of deficiencies if such exist.

Q. 65. Is the loss of private property incurred by militia on service made good by the public? R. & O. 673.
Loss of private property.

A. Yes; if it can be clearly shewn that the loss was not in any manner attributable to carelessness, that it was unavoidable, and that the articles lost were part of their necessary equipment as militiamen.

CHAPTER III.

THE ARMY ACT AND QUEEN'S REGULATIONS.

M. A. 64.
Militia subject
to Queen's
Regulations.

Q. 66. Are the Active Militia subject to the Queen's Regulations and Orders for the Army?

A. Yes.

M. A. 64.
When subject
to Army Act.

Q. 67. When do officers and men of the Active Militia become subject to the Army Act and all other laws applicable to Her Majesty's troops in Canada?

A. From the time of being called out for active service, and also during the period of annual drill or training, and also during any drill or parade of his corps at which he may be present in the ranks or as a spectator, and also when going to or from the place of drill or parade of his corps, and also at any other time while in the uniform of his corps.

Army Act.

Q. 68. What is the Army Act?

A. It is a consolidation of the Military and Marine Mutiny Acts, the Articles of War issued in pursuance of those Acts, and the Army Enlistment Act.

Continuance of

Q. 69. How is it continued in force?

A. It is re-enacted every year by the Imperial Parliament.

Advantages of
re-enactment.

Q. 70. What advantage does this annual re-enactment possess?

A. It affords an opportunity of wiping out all portions which experience has shown to be useless or defective, and of adding such clauses as may appear necessary and desirable; thus the Act of the year is complete in itself, and the necessity of referring to

various Acts passed in preceding years is entirely done away with.

Q. 71. Into how many parts is the Army Act divided? Divisions of Army Act.

A. It is divided into five parts :

1st. Discipline.

2nd. Enlistment.

3rd. Billeting and impressment of carriages.

4th. General provisions.

5th. Application of Military law, saving provisions and definitions.

Arrest and Trial.

Q. 72. What is the meaning of "military custody?" M. M. L.
A. A. 45.
Military custody defined.

A. "Military custody" means, according to the usages of the service, as regards an officer or non-commissioned officer, the putting the offender under arrest, or, as regards a private soldier, the putting him in confinement under charge of a guard, picquet, patrol, sentry, or provost marshal. If circumstances require it, however, an officer or non commissioned officer may also be placed in military custody under the charge of a guard, picquet, patrol, sentry, or provost marshal.

Q. 73. Who may order offenders into military custody? M. M. L.
A. A. 45.
Who may order offenders into.

A. An officer may order into military custody an officer of inferior rank, or any non-commissioned officer or soldier, provided that no officer of a rank

senior to himself is present, and any non-commissioned officer may order into military custody any soldier. Provost marshals can arrest and hold in custody any person subject to Military law who is committing an offence.

M. M. L.
A. A. 45.
Junior ordering senior into.

Q. 74. When may an officer order into military custody any other officer, though he be of higher rank ?

A. When engaged in any quarrel, fray, or disorder ; and in the case of any glaring impropriety, such as drunkenness on parade, it may become the *duty* of a junior to take the same extreme measure.

M. M. L.
A. A. 45.
Both officers need not be of same corps.

Q. 75. Is it necessary that both persons should belong to the same corps ?

A. No ; the order is to be obeyed, notwithstanding that 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 ; but it is necessary when an officer places another under arrest that he should at once report the fact to the commanding officer of the offender, or direct to the general in command if he considers it necessary.

M. M. L.
Placing officer in arrest.

Q. 76. How is an officer placed in arrest ?

A. An officer is placed in arrest, either directly by the officer who orders it, or more generally through the medium of a staff officer, *i.e.*, by the adjutant or a field officer of the regiment when the arrest is ordered by the commanding officer, and by an officer of the general staff when the arrest is ordered by a superior officer, and not through the channel of the commanding officer. On being put in arrest, an

officer is deprived of his sword, and becomes, to all intents and purposes, a prisoner.

Q. 77. When an officer is placed in arrest how is he informed of the nature of the arrest?

M. M. L.
Informing officer of nature of arrest.

A. An officer placed under arrest should always be informed in writing of the nature of the arrest, which will be governed by the circumstances of the case. Any change in the nature of the arrest which may be made should be notified in writing to the prisoner.

Q. 73. How many kinds of arrest are there?

Q. R. VI. 19.
Kinds of arrest.

A. There are two kinds, close arrest and open arrest. When arrest is not described as open arrest, it means close arrest.

Q. 79. Should an officer be placed under arrest without any previous investigation?

Q. R. VI. 22.
Arrest of officers without previous investigation.

A. An officer may, when necessity arises, be placed under arrest by a competent authority, on the commission of an offence, without previous investigation, but a commanding officer, on receiving a complaint, or coming to the knowledge of circumstances tending to inculpate an officer, will not ordinarily place him under arrest until he has satisfied himself by inquiry that it will be necessary to proceed with the case and report it to superior authority.

Q. 80. If a commanding officer prefers charges against an officer, what should he do?

Q. R. VI. 22.
When commanding officer prefers charge.

A. Invariably place him under arrest and report the case, without unnecessary delay, to the general commanding.

Q. R. VI. 20.
Regulations
for officers un-
der arrest.

Q. 81. What are the regulations laid down for an officer under arrest?

A. An officer in close arrest is not allowed to leave his quarters or tent. When in open arrest he may take exercise at stated periods, within defined limits, which will usually be the precincts of the regimental barracks, or camp, but is, on no account, to appear in his own or any other mess premises or in any place of amusement or public resort, and he is not, on any pretext whatsoever, ever to appear dressed otherwise than in uniform.

Q. R. VI. 20.
Articles that
are not to be
worn in arrest.

Q. 82. What articles is an officer under arrest forbidden to wear?

A. His sash, sword, or belts.

Q. R. VI. 23.
Officer cannot
demand court
martial.

Q. 83. May an officer who has been placed in arrest demand a court martial?

A. No ; he has no right to demand a court martial, or, after he has been released by proper authority, to persist in considering himself under the restraints of such arrest, or to refuse to return to the performance of his duty.

M. M. L.
Q. R. VI. 21.
Release from
arrest.

Q. 84. How is an officer released from arrest?

A. The authority competent to direct the release of an officer under arrest is the officer who imposed the arrest, or the superior to whom it may have been reported ; but, except where it appears that the arrest has been made through error, an officer should not be released from arrest without the sanction of the highest authority to whom the case may have been referred.

Q. 85. How are non-commissioned officers placed in arrest?

A. The rules which govern the close and open arrest of officers apply also to non-commissioned officers. A non-commissioned officer charged with the commission of a serious offence will be placed under arrest forthwith; but if the offence is not of a serious nature, it may be investigated and disposed of without previous arrest; where there is a doubt as to whether an offence has been committed, the arrest may be delayed until it is decided to proceed against him.

Q. R. VI. 24.
Arrest of non-commissioned officers.

Q. 86. When is a private soldier to be confined?

Q. R. VI. 25.
Confinement of private soldiers.

A. A private soldier charged with a serious offence is to be confined at the time of the commission or discovery of the offence; but in the case of minor offences, such as absence from tattoo and other roll calls, overstaying a pass, or slight irregularities in quarters, he will not be lodged under charge of the guard, and the investigation of the charge may be held without previous confinement in military custody.

Q. 87. When a private soldier refuses to obey an order distinctly given, or resists the authority of a non-commissioned officer, what course should be taken?

Q. R. VI. 26.
Disobedience of orders.

A. He should be confined without altercation, and immediate report made to the officer commanding his troop, battery or company, or to the adjutant.

Q. 88. When a non-commissioned officer has occasion to confine a soldier for any offence, how should he do it?

Q. R. VI. 26.
When confined by N. C. O.

A. He should invariably obtain the assistance of one or more privates to conduct the offender to the

guard room, and should himself avoid in any way coming in contact with him, except under unavoidable circumstances.

Q. R. VI. 27.
For drunkenness.

Q. 89. How is a private soldier in a state of drunkenness to be confined ?

A. He is to be confined alone, and in the prisoners' room, or in a guard room cell until sober, and not in the guard room itself, where he may often be provoked to an act of violence and insubordination. He is to be deprived of his boots, except when the weather is too cold, and is to be visited at least every two hours by a non-commissioned officer of the guard and an escort in order that his condition may be ascertained.

Q. R. VI. 27.
24 hours to elapse before investigation.

Q. 90. What time should elapse before he is brought before an officer for investigation ?

A. Twenty-four hours should usually elapse before the investigation, so as to ensure his being perfectly sober.

Q. R. VI. 16.
Delivery of t to "crime."

Q. 91. When any person is committed into military custody, within what time should a statement of the offence be delivered to the officer or non-commissioned officer into whose custody the person is committed ?

A. A statement of the offence with which the person so committed is charged—termed the "crime"—should be delivered at the time of committal, or, as soon as practicable, but, under any circumstances, not later than 24 hours thereafter. If the crime is not delivered at the time a verbal report to the same effect is to be made.

Q. 92. If the crime is not received within twenty-four hours what is the duty of the commander of the guard ?

Q. R. VI. 16.
If not delivered within 24 hours.

A. He will either take proper steps for procuring it, or report the circumstance to the officer to whom his guard report is furnished.

Q. 93. What is the duty of that officer ?

Q. R. VI. 16.
Duty of commanding officer.

A. If the crime, or other evidence sufficient to justify the detention, is not forthcoming within forty-eight hours, at the expiration of that time he will order the release of the prisoner.

Q. 94. When are prisoners in confinement allowed the use of bedding ?

Q. R. VI. 29.
Use of bedding by prisoners.

A. Prisoners in confinement for trial by court martial will be allowed the use of bedding up to the time of the promulgation of their sentence or of acquittal. Prisoners in confinement pending inquiry will be allowed the use of bedding if their detention exceeds two days. In severe weather prisoners may be allowed such bedding as may be necessary.

Q. 95. Are prisoners required to take exercise ?

Q. R. VI. 29.
Exercise.

A. Yes, care is to be taken that prisoners detained under charge of a guard are required to take such exercise, under supervision of the guard, as may be deemed requisite for the preservation of their health.

Q. 96. Is an offender while in arrest or confinement to be required to perform any military duty ?

Q. R. VI. 31.
Not to perform duty.

A. No, except such duties as may be necessary to relieve him from the charge of any cash, stores, accounts, or office of which he may have charge.

Q. R. VI. 31.
Prisoner by
error ordered
to perform
duty.

Q. 97. If, by error, or in case of emergency, he has been ordered to perform any duty, is he thereby absolved from liability to be proceeded against for his offences ?

A. No.

Q. R. VI. 31.
Not to bear
arms.

Q. 98. Is an offender, when in arrest or confinement, to be permitted to bear arms ?

A. No, except by order of his commanding officer in case of emergency or on the line of march.

M. M. L.
Release of
soldier.

Q. 99. When a soldier has once been confined, what authority is necessary for his release ?

A. If confined in a regimental guard room he can only be released by the authority of the commanding officer of the regiment, and if in a garrison guard room by the officer commanding the garrison.

Q. R. VI. 25.
Not to be
imprisoned for
minor offences.

Q. 100. Is a soldier against whom a charge for a minor offence is pending to be regarded as a prisoner ?

A. No, he is not to be regarded as a prisoner, and attends all parades, but will not be detailed for duty.

M. M. L.
Prisoners not
to be put in
irons.

Q. 101. Are men confined either in the prisoners' room or in the guard room cells to be kept in irons ?

A. No, never, except when it is necessary for safe custody, or to prevent violence.

M. M. L.
A. A. 22.
Breaking
arrest.

Q. 102. Is breaking or attempting to break arrest or confinement regarded as a serious offence ?

A. Yes, it is a very serious offence, and renders an officer liable to be cashiered, and a soldier liable to imprisonment.

Q. 103. What report respecting prisoners is the commander of a guard required to make ?

M. M. L.
A. A. 21.
Report of
commander of
guard.

A. It is the duty of the commander of the guard (immediately on the relief of the guard) to report in writing to his commanding officer the prisoner's name and offence, and the name and rank of the committing officer ; and he should include in his report the "crime" above mentioned, or if it has not been delivered should state the fact. If he fails to do so he himself commits an offence.

Power of Commanding Officer.

Q. 104. What is the object of the above report ?

M. M. L.
Object of
report.

A. To enable the commanding officer without delay to institute an investigation of the case.

Q. 105. Where are the charges against soldiers for minor offences, in respect of which they have not been taken into custody, to be entered ?

Q. R. VI. 33.
Entry of minor
offences.

A. In the minor offence report.

Q. 106. By whom are entries against a non-commissioned officer to be made ?

Q. R. VI. 33.
Entries
against N. C. O.

A. If he has been placed in charge of a guard, the entry in the guard report will be made by the commander of the guard. With this exception, all entries against non-commissioned officers in the guard report and minor offence report will be made in the orderly room.

Q. 107. When are prisoners disposed of ?

Q. R. VI. 33.
Prisoners
when disposed
of.

A. Prisoners should be disposed of daily (Sundays, Good Friday, and Christmas Day excepted),

and, when practicable, in the morning before the hour of commanding officers' parade.

Q. R. VI. 33.
Medical
examination.

Q. 108. By whom are they previously examined ?

A. By a medical officer, with a view to their being admitted to hospital, if not in a fit state to undergo punishment.

Q. R. VI. 33.
Minor offences.

Q. 109. By whom should minor offences against private soldiers usually be investigated and disposed of ?

A. By officers commanding troops and companies. All charges not so disposed of will be investigated by the commanding officer. The officer commanding the troop or company will attend with the company defaulter book.

R. O. P. 2.
Investigation
of charge.

Q. 110. What is the duty of a commanding officer as to the investigation of a charge against a person under his command ?

A. He is to take care that such person is not detained in custody for more than forty-eight hours after the committal has been reported to him, without the charge being investigated, unless such investigation seems to him impracticable with due regard to the public service.

R. O. P. 2.
When deten-
tion exceeds
48 hours.

Q. 111. What should he do in the case of detention beyond forty-eight hours ?

A. He should report it, and the reason thereof to the general commanding.

R. O. P. 3.
Hearing
charge.

Q. 112. How is a charge against a soldier to be heard ?

A. In the presence of the accused, who will have full liberty to cross-examine any witness against

him, and to call any witnesses and make any statement in his defence.

Q. 113. On a charge of absence without leave exceeding seven days, may the accused demand that the evidence against him be taken on oath ?

R. O. P. 3.
Absence without leave.

A. Yes.

Q. 114. Of what articles are soldiers to be deprived whilst under examination or trial ?

Q. R. VI. 30.
Prisoners to be deprived of certain articles.

A. Any articles they can make use of as missiles, including, if they remain uncovered, their caps.

Q. 115. What courses are open to a commanding officer upon an investigation of a charge against a person under his command ?

A. A. 46.
Courses open to C. O.

A. He may,—

1st. Dismiss the charge if he thinks it ought not to be proceeded with.

2nd. If he thinks it ought to be proceeded with, he may take steps for bringing the offender to a court martial.

3rd. In the case of a soldier he may deal with the case summarily.

Q. 116. What should he do in cases of first offences, not of an aggravated character ?

Q. R. VI. 1.
First offences.

A. He should try the effect of mild reproof and admonition, and not resort to punishment until a repetition of the offence shall have shown that the milder treatment has not been productive of the desired effect.

Q. 117. What charges may a commanding officer, without reference to superior authority, dispose of summarily or try by regimental court martial ?

Q. R. VI. 35.
Charges that C. O. may dispose of.

4. 1. Striking or offering violence to any person in whose custody the offender is placed.

2. Resisting an escort whose duty it is to apprehend him or have him in charge.

3. Breaking out of barracks, camp, or quarters.

4. Neglecting to obey any general, garrison, or other orders.

5. Absenting himself without leave (excepting absence without leave exceeding twenty-one days).

6. Failing to appear at the place of parade or rendez-vous appointed by his commanding officer, or going from thence without leave before he is relieved, or without urgent necessity, quitting the ranks.

7. Being found beyond any limits fixed or in any place prohibited by order, without a pass or written leave from his commanding officer; or—

8. Absenting himself without leave from any school when duly ordered to attend there.

9. Drunkenness.

10. Making away with his arms, ammunition, equipments, instruments, clothing, regimental necessaries, or any horse of which he has charge.

11. Losing by neglect any of the above-mentioned things.

12. Making away with any military decoration granted to him.

13. Wilfully injuring anything above mentioned, or any property of a comrade, or of an officer, or regimental mess or band, or any regimental institution, or any public property.

14. Ill-treating any horse used in the public service.

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

Q. 118. When a commanding officer deals with a case summarily, what punishment may he award? Q. R. VI, 42, and 56.
Punishment
by C. O.

A. He may award :—

1. Imprisonment, with or without hard labor, for any period not exceeding seven days: and—

2. In the case of drunkenness may, either in addition to or without imprisonment, impose a fine not exceeding ten shillings (\$2.44), according to the following scale :

I. For the first and second instances, no fine.

II. For the third and every subsequent instance :

(a) If within three months of the previous instance, 7s. 6d (\$1.83) ;

(b) If over three months and within six months, 5s. (\$1.22) ;

(c) If over six months, and within nine months, 2s. 6d. (61cts) ;

(d) If over nine months, no fine.

III. Where four preceding instances of drunkenness have been recorded against the offender within the previous twelve months, 2s. 6d. (61cts) will be added to the fine laid down in Rule II.

3. In addition to or without any other punishment may order the offender to suffer any deduction from his ordinary pay authorized by the Act.

4. In the case of absence without leave, he may award imprisonment, with or without hard labor, for a period not exceeding twenty-one days ;

but in no case shall the term of imprisonment awarded, if greater than seven days, exceed the term of absence.

5. In the case of absence without leave not exceeding five days, he may award deprivation of pay for every day of absence. If the absence exceeds five days all ordinary pay is forfeited without award.

Q. R. VI. 42.
Minor punishments by C. O.

Q. 119. What minor punishments may a commanding officer award?

A. (a) Confinement to barracks for any period not exceeding 28 days.

(b) Extra guards or piequets.

Q. R. VI. 42.
Punishments attending confinement to barracks.

Q. 120. What does confinement to barracks carry with it?

A. Punishment drill to the extent of fourteen days, the taking all duties in regular turn, attendance on parades, and being further liable to be employed on duties of fatigue, at the discretion of the commanding officer.

Q. R. VI. 42.
Punishments subject to certain provisions.

Q. 121. To what provisions are the above punishments subject?

A. (1). When imprisonment exceeding seven days is awarded for absence without leave, a minor punishment must not be given in addition to the imprisonment.

(2). An award of imprisonment up to seven days inclusive, will be in hours; exceeding seven days, in days.

(3). When an award includes imprisonment and a minor punishment, the latter will take effect at the termination of the imprisonment.

(4). A single award of punishment, including imprisonment and confinement to barracks, will not exceed 28 days.

(5). A soldier undergoing imprisonment or confinement to barracks may, for a fresh offence, be awarded further punishment of imprisonment or a minor punishment, or both, provided that no soldier shall be imprisoned by summary award for more than seven consecutive days (except for absence without leave) and that the whole extent of consecutive punishment including imprisonment and confinement to barracks shall not exceed 56 days in the aggregate.

(6). Defaulters are not to be required to undergo any portion of their punishment drill or confinement to barracks which may have elapsed by reason of their being in hospital or employed on duty.

Q. 122. How is punishment drill to be carried out?

Q. R. VI. 43.
Punishment
drill.

A. Punishment drill is not to exceed one hour at a time, and is to consist of marching in quick time only and not of instruction drill. In very cold weather the double may be used for short periods at a time. Under no circumstances is it to exceed four hours altogether in the same day.

Q. 123. To what extent may a commanding officer delegate the power of punishment to officers commanding troops, batteries, or companies?

Q. R. VI. 46.
Delegating
power.

A. For minor offences, the power of awarding minor punishments, not exceeding seven days' confinement to barracks.

Q. R. VI. 44.
Punishment
of N. C. O.
by C. O.

Q. 124. Are non-commissioned officers to be subjected to summary or minor punishments?

A. No, but they may be reprimanded, or severely reprimanded, by the commanding officer; and acting and lance non-commissioned officers may be ordered to revert to their permanent grade.

Q. R. VI. 34.
Entry of
awards by C. O.

Q. 125. Where is the award or decision of the commanding officer to be entered?

A. In the guard report or minor offence report, as the case may be, and signed by him.

Q. R. VI. 34.
Entry of
awards by
officers com-
manding com-
panies.

Q. 126. How are awards of punishment by officers commanding troops or companies entered?

A. They are reported to the commanding officer, before the hour for the disposal of prisoners, and, together with any remissions or remarks which he may find it necessary to make, entered in the minor offence report for the day, below the cases disposed of by the commanding officer.

Q. R. VI. 34.
Minor offence
report.

Q. 127. What is done with this report after being signed by the commanding officer?

A. It is attached to the guard report for the day.

Q. R. VI. 34.
Case of
prisoner
remanded.

Q. 128. What is done in the case of a prisoner in the guard room remanded for further inquiry?

A. His case is brought under review daily until disposed of, and the order for remand will be entered daily in the guard report by the commanding officer.

A. A. 42.
Remedy of
officer.

Q. 129. What remedy has an officer who considers himself wronged by his commanding officer?

A. If on due application he does not receive from his commanding officer the redress to which he considers himself entitled, he may complain to the commander in chief, who is required to examine into such complaint.

Q. 130. What remedy has a soldier who considers himself wronged? A. A. 43.
Remedy of
soldier.

A. (a) If he considers himself wronged by any officer other than his captain, or by any soldier, he may complain thereof to his captain.

(b) 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.

(c) 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 general or other officer commanding the district.

Q. 131. What is required of every officer to whom such complaint is made? A. A. 43.
Duty of officer
to whom com-
plaint is made.

A. He is to cause such complaint to be enquired into, and, if on enquiry he is satisfied of the justice of the complaint so made, to take such steps as may be necessary for giving full redress to the complainant.

Q. 132. When a commanding officer remands a soldier for trial by general or district court martial, what is his course of procedure? R. O. P. 5.
Procedure of
C. O. on send-
ing prisoner for
trial by C. M.

A. He takes, or directs to be taken, a summary of the evidence and encloses it to the general commanding, together with the charge sheet, the accused's defaulter sheet, statement as to character, and a list of witnesses for the prosecution, and asks that a court martial be ordered to assemble for the trial of the prisoner.

R. O. P. 5.
"Summary of
evidence."

Q. 133. What is the "summary of evidence?"

A. It is the evidence of the witnesses who were before the commanding officer taken down in writing in presence of the prisoner and subscribed to by the witnesses, to which is added any statement of the prisoner material to his defence.

R. O. P. 5 (A)
Cross examin-
ation by
prisoner.

Q. 134. Has the prisoner the right of cross-examining the witnesses?

A. Yes, if there is any variance or discrepancy between the evidence as given on the former and latter occasions.

R. O. P. 5 (C)
Rehearing
case.

Q. 135. After the summary of evidence has been taken may the commanding officer rehear the case?

A. Yes; he may rehear the case and reconsider his decision.

R. O. P. 5. (E)
Copy of sum-
mary for
prisoner.

Q. 136. How may the prisoner obtain a copy of the summary of evidence?

A. The convening officer may order a copy to be given to him, or, if the convening officer should not so direct, he may request a copy which shall be furnished him upon payment of one penny for every seventy-two words, or the court before which he is tried may order a copy to be furnished to him gratis,

or may permit him to inspect the summary laid before the court.

Q. 137. What is the "charge sheet?"

R. O. P. 9.

A. The charge sheet contains the whole issue or issues to be tried by a court martial at one time, and may contain one charge or several charges.

"Charge sheet."

Q. 138. What should each charge state?

R. O. P. 11.

A. Each charge should be a statement of one offence only, expressed in the words of the Army Act, 1881. It is divided into two parts:

Contents of Charge sheet.

1. The statement of the *offence*; and
2. The statement of the *particular* of the act, neglect, or omission constituting the offence.

Q. 139. What should "the particulars" state?

R. O. P. 11.

A. "The particulars" should state such circumstances respecting the alleged offence as will enable the accused to know what act, neglect, or omission is intended to be proved against him.

"Particulars."

Q. 140. What should be done in a case where it appears doubtful if the evidence will secure a conviction?

Q. R. VI. 36. Doubtful case, course in.

A. It should not be sent before a court martial unless it is important that the guilt or innocence of the accused should be definitely settled.

Q. 141. Is a soldier to be tried by court martial for an act of simple drunkenness?

Q. R. VI. 52. Simple drunkenness.

A. No, unless it is "an aggravated offence of drunkenness," or unless four instances of drunkenness have been recorded against him in the defaulter book within the previous twelve months.

A. A. 44.
Aggravated
drunkenness.

Q. 142. What is an] "aggravated offence of drunkenness"?

A. It means drunkenness committed on the march or otherwise on duty, or after the offender was warned for duty, or when by reason of the drunkenness, the offender was found unfit for duty.

Q. R. VI. 52.
Four previous
convictions.

Q. 143. Is it optional for commanding officers to try by court martial or dispose summarily of cases of drunkenness where there are four previous convictions?

A. Yes, but if the previous instances of drunkenness recorded amount to eight within the previous twelve months the offender should, as a rule, be tried by court martial.

Q. R. VI. 57.
Punishment
for simple
drunkenness.

Q. 144. In dealing with cases of simple drunkenness, unconnected with another offence, should confinement to barracks be added to a fine?

A. Not unless the aggravated nature of the offence seems to demand it.

Q. R. VI. 57.
Imprisonment
for drunken-
ness.

Q. 145. Should imprisonment be awarded for an instance of drunkenness not triable by court martial?

A. No, except where the amount of unpaid fines for drunkenness recorded against a soldier is 20s. (\$4.87) and upwards, in which case a commanding officer should abstain from awarding an additional fine, and should substitute imprisonment or some other punishment which it is in his power to award.

Q. R. VI. 59.

Q. 146. Does the award of a fine entail an entry in the regimental defaulter book?

A. No.

Prisoners' Preparation for Defence.

Q. 147. When a prisoner is to be tried by court-martial, what facilities are afforded him for defending himself? R. O. P. 14.
Prisoner to be informed of charge.

A. Before being arraigned he is to be informed by an officer of every charge on which he is to be tried, and at the same time to be given a copy of the charge sheet, which, if necessary, is to be explained to him, and, if he is illiterate, read to him. A list of the officers who are to form the court is also to be furnished to him if he desires it.

Q. 148. What interval should elapse between his being informed of the charge on which he is to be tried and his arraignment? R. O. P. 14.
Interval before trial.

A. The interval between his being so informed and his arraignment should not be less, in the case of a regimental court-martial, than eighteen, and in the case of any other court-martial, than twenty-four hours.

Q. 149. How does a prisoner secure the attendance of his witnesses? R. O. P. 14.
Prisoner's witnesses.

A. On his giving the names of any witnesses whom he desires to call in his defence, reasonable steps must be taken to procure their attendance.

Q. 150. May two or more prisoners be tried together? R. O. P. 15.
Trying two or more prisoners.

A. Yes, for an offence charged to have been committed by them collectively.

Q. 151. Is it necessary to give notice of such intention? R. O. P. 15.
Notice of intention.

A. Yes; notice of the intention to try the prisoners together should be given to each prisoner at the time of his being informed of the charge.

R. O. P. 15.
May claim
separate trial.

Q. 152. May any prisoner claim a separate trial?

A. Yes, if the evidence of the other prisoners is material to his defence.

A. A. 162.
Not to be tried
twice.

Q. 153. Is a person subject to military law who has been acquitted or convicted of an offence by a competent civil court, liable to be tried again by court martial?

A. No.

A. A. 162.
Except by civil
law.

Q. 154. May a person sentenced by a court martial to punishment for an offence be afterwards tried by a civil court for the same offence?

A. Yes, but that court in awarding punishment is required to have regard to the military punishment already undergone.

Courts Martial.

Descriptions
of courts mar-
tial.

Q. 155. How many descriptions of courts martial are there?

A. There are three ordinary courts martial, namely, general, district, and regimental; and two extraordinary courts martial, namely, field general, and summary.

M. A. 73.
Procedure, &c.
same in
militia.

Q. 156. Are the composition, modes of procedure and powers of militia courts martial in Canada the same as those of courts martial of Her Majesty's regular forces?

A. Yes, so far as they are not inconsistent with the Militia Act.

Q. 157. By whom may a general court martial be convened?

A. A. 48.
General C. M.,
by whom convened.

A. By Her Majesty, or some officer authorized by her.

Q. 158. Of how many officers does a general court martial consist?

A. A. 48. (3)
Number and
rank of officers,

A. In the United Kingdom, India, Malta, and Gibraltar of not less than nine, and elsewhere of not less than five officers, each of whom must have held a commission during not less than three whole years, and of whom not less than five must be of a rank not below that of captain.

Q. 159. On the trial of an officer, of what rank should the members of the court martial be?

R. O. P. 21.
On trial of
officer,

A. They should be of an equal, if not superior, rank to that officer, unless officers of that rank are not available, but in no case may an officer under the rank of captain be a member of a court martial for the trial of a field officer.

Q. 160. What are the powers of a general court martial?

A. A. 48. (6)
Powers.

A. A general court martial has the power to try every offence committed by persons subject to military law.

Q. 161. Of what rank is the president of a general court martial?

Q. R. VI. 95.
President,

A. Whenever a general officer or a colonel is available, an officer of inferior rank is not to be appointed,

A. A. 44.
Sentences in
the case of
officer.

Q. 162. What sentences may be given by a general court martial in the case of an officer?

A. A general court martial can sentence an officer to—

- (a) Death.
- (b) Penal servitude for a term not less than five years.
- (c) Imprisonment, with or without hard labor, for a term not exceeding two years.
- (d) cashiering.
- (e) Dismissal.
- (f) Forfeiture of seniority of rank, either in the army, or in his corps, or in both.
- (g) Reprimand or severe reprimand.

A. A. 44.
Cashiering be-
fore sentence.

Q. 163. What must first be done to an officer before sentencing him to penal servitude or imprisonment?

A. He must first be cashiered.

A. A. 44.
Sentences in
case of soldier.

Q. 164. What sentences may be given by a court martial in the case of a soldier?

A. A general court martial may sentence a soldier to—

- (a) Death.
- (b) Penal servitude for a term not less than five years.
- (c) Imprisonment, with or without hard labor, for a term not exceeding two years.
- (d) Discharge with ignominy.
- (e) Reduction of a non-commissioned officer to a lower grade, or to the ranks.
- (f) Forfeitures, fines, stoppages.

Q. 165. By whom may a district court martial be convened ?

A. A. 48. (2)
District C. M.,
by whom convened.

A. A district court martial may be convened by an officer authorized to convene general courts martial, or by an officer who is duly authorized so to do by an officer having power to convene general courts martial.

Q. 166. Of how many officers does a district court martial consist ?

A. A. 48. (4)
Number of
members.

A. In the United Kingdom, India, Malta, and Gibraltar, of not less than five, and elsewhere of not less than three officers, each of whom must have held a commission during not less than two whole years.

Q. 167. What are the powers of a district court martial ?

A. A. 48. (6)
Powers of.

A. A district court martial has the same powers as a general court martial except that it cannot try an officer nor award the punishment of death or penal servitude.

Q. 168. Of what rank is the president of a district court martial ?

A. A. 48. (9)
President of.

A. He should not be under the rank of field officer, unless the officer convening the court is under that rank, or unless a field officer is not available.

Q. 169. When an officer of the rank of captain is not available as president of a district court martial what course should be pursued ?

Q. R. VI. 74.

A. The power of convening the court should not be exercised except in case of necessity, and when the case cannot be conveniently referred to an officer holding a superior command,

Q. R. VI. 75. *Regimental C.M., by whom convened.* Q. 170. Who is the proper authority to convene a regimental court martial ?

A. The commanding officer of the person charged.

A. A. 47. (2) *Number of members.* Q. 171. Of how many officers does a regimental court martial consist ?

A. Of not less than three officers, each of whom must have held a commission during not less than one whole year.

A. A. 47. (5) *Powers of.* Q. 172. What are the powers of a regimental court martial ?

A. A regimental court martial cannot try an officer nor award the punishment of death or penal servitude, or of imprisonment in excess of forty-two days, but, otherwise, any offence committed by a person subject to military law, and triable by court martial, may be tried and punished by a regimental court martial.

A. A. 47. (4) *President of.* Q. 173. Of what rank is the president of a regimental court martial ?

A. He is not to be under the rank of captain, except on the line of march or on board ship, or when a captain is not available, when an officer of any rank may be president,

R. O. P. 19. *Disqualification of members.* Q. 174. What officers are disqualified from sitting on general, district, or regimental courts martial ?

A. An officer is disqualified if he—

I. Is the officer who convened the court ; or

II. Is the prosecutor or a witness for the prosecution ; or

III. Investigated the charges before trial, or was a member of a court of inquiry respecting the matters on which the charges against the prisoner are founded ; or

IV. Is the commanding officer of the prisoner, or of the corps or battalion to which the prisoner belongs ; or

V. Has a personal interest in the case.

Q. 175. May the members of a general or district court martial be officers of the same corps ?

R. O. P. 20.
To be of different corps.

A. As far as practicable, general and district courts martial should be composed of officers of different corps.

Q. 176. When may a field general court martial be assembled ?

A. A. 49.
Field general C. M., when assembled.

For the trial of an offence committed by any person subject to military law against the property or person of any inhabitant of or resident in any country beyond the seas, when it is not practicable to try such offence by an ordinary general court martial.

Q. 177. By whom may it be assembled ?

A. A. 49. (1)
By whom.

A. By any officer in command of any detachment or portion of troops in such country.

Q. 178. Of how many officers does a field general court martial consist ?

A. A. 49. (1)
Number of members.

A. Of not less than three.

Q. 179. Who is to preside ?

A. A. 49. (1)
President of.

A. The convening officer may preside, but when practicable he is to appoint another officer as president, who, if possible, is not to be under the rank of captain.

R. O. P. 103 (D)
Disqualifica-
tions.

Q. 180. What officers are disqualified from serving on a field general court martial ?

A. The prosecutor, witnesses for the prosecution, or any officer who has a personal interest in the case.

A. A. 49. (2)
Death sen-
tence.

Q. 181. May sentence of death be passed by a field general court martial ?

A. Yes, if all the members concur.

A. A. 49. (3)
Other sen-
tences.

Q. 182. What other powers has a field general court martial ?

A. It may award any sentence which a general court martial is competent to award ; provided always, that no sentence of any such court martial shall be executed until properly confirmed.

A. A. 55.
Summary, C. M.
when assem-
bled.

Q. 183. When may a summary court martial be convened ?

A. When any person subject to military law and being on active service with any body of forces is charged with an offence, a summary court martial may be convened, if an ordinary court martial cannot, having due regard to the public service, be convened to try the offence.

R. O. P. 104.
By whom.

Q. 184. By whom may a summary court martial be convened ?

A. By the commanding officer of any corps or portion of a corps on active service, or by any officer in immediate command of a portion of a body of forces on active service.

R. O. P. 105.
Number of
members.

Q. 185. Of how many officers does the court consist ?

A. Of not less than three, but if three officers are not available it may consist of two.

Q. 186. Who is to preside ?

R. O. P. 105. (B)
President of.

A. If the convening officer is of opinion that three other officers are not available, he may appoint himself president; but if three other officers are available he should appoint another as president who may be of any rank, but, if possible, should not be below the rank of captain.

Q. 187. What are the powers of a summary court martial ?

R. O. P. 117.
Powers of.

A. The court, if consisting of three or more officers, may award any sentence which a general court martial can award; but if the court pass sentence of death the whole court must concur. The court, if consisting of two officers, may award any sentence authorized for the offence, not exceeding summary punishment or two years' imprisonment with hard labor.

Q. 188. What officers are disqualified from sitting on a summary court martial ?

R. O. P. 105. (D)
Disqualifications.

A. The provost marshal, an assistant provost marshal, the prosecutor and witnesses for the prosecution.

Procedure at Trial.

Q. 189. On a court martial assembling what is first to be done ?

R. O. P. 22.
Procedure on assembling.

A. The order convening the court is to be read; and also the names, rank, and corps of the officers appointed to serve on the court, and it shall be the first duty of the officers appointed to serve on the court to satisfy themselves that the court is legally constituted; [that is to say,]

1. That the court has been properly convened.
2. That the court consists of a number of officers not less than the legal minimum.
3. That each of the officers so assembled is eligible and not disqualified for serving on that court martial.
4. That the president is of the required rank and duly appointed; and
5. In the case of a general court martial, that the officers are of the required rank.

R. O. P. 22. (C)
If not satisfied
that court is
legally con-
stituted.

Q. 190. If not satisfied on these points what is the duty of the court ?

A. They should report their opinion to the convening authority, and may adjourn for that purpose.

R. O. P. 23.
Next duty.

Q. 191. If satisfied, what is the next duty of the court ?

A. They should make certain in respect to each charge about to be brought before them,—

1. That it appears to be laid against a person amenable to military law and to the jurisdiction of the court.
2. That each charge discloses an offence under the Army Act, and is framed in accordance with the Rules of Procedure, and is so explicit as to enable the prisoner readily to understand what he has to answer.

R. O. P. 23. (B)
If not satisfied
as to charge.

Q. 192. If not satisfied on these points what is the duty of the court ?

A. They should report their opinion to the convening authority, and may adjourn for that purpose.

Q. 193. Between what hours may a court martial sit?

Q. R. VI. 96.
R. O. P. 63.
Hours of sitting.

A. A court martial will usually sit between 10 A. M. and 4 P. M., or 11 A. M. and 5 P. M. The time should not exceed six, or, at the most, eight hours in one day, but a court martial may sit at such times and for such period between the hours of 6 A. M. and 6 P. M. as may be directed by the proper military authority, and the trial may be continued after 6 P. M. if necessary, the reason for so doing to be recorded in the proceedings. In cases requiring an immediate example, or when the convening officer, or officer commanding any body of troops, certifies under his hand that it is expedient for the public service, trials may be held at any hour and on any day, even Sundays, Christmas Day, or Good Friday.

Q. 194. How are the members of a court martial seated?

How members are seated.

A. The president takes his seat at the head of the table, the senior member on his right, the next senior on his left, and so on.

Q. 195. What are the duties of the president?

R. O. P. 58.
Duties of president.

A. He is responsible for the trial being conducted in proper order and in accordance with the Army Act and Rules of Procedure, and will take care that everything is conducted in a manner befitting a court of justice. It is his duty to see that justice is administered, and that the prisoner has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a prisoner, or of his ignorance or of his incapacity to examine or cross-examine witnesses, or otherwise.

Q. R. XII. 13.
Uniform to be worn.

Q. 196. What uniform do officers wear when attending courts martial?

A. On court martial duty, officers will, as a rule, attend general courts martial in *review order*; district, in *marching order*; and regimental, in *drill order*.

An open court.

Q. 197. Is a court martial an open court?

A. Yes, except when closed for deliberation.

R. O. P. 24.
When prisoner brought in.

Q. 198. When is the prisoner brought before the court?

A. After the court have satisfied themselves on all the preliminary points the prisoner is brought in under escort.

Q. R. VI. 97.
Not to be handcuffed.

Q. 199. Are prisoners to be handcuffed?

A. Not unless it is absolutely necessary for the purpose of preventing their escape or rescue, or of restraining their violent conduct.

R. O. P. 24.

Q. 200. When do the prosecutor and witnesses appear?

A. At the same time as the prisoner is brought in.

Q. R. VI. 91.
Prosecutor.

Q. 201. Who is the prosecutor?

A. Any officer who is himself subject to military law and is fully competent to conduct the proceedings.

Q. R. VI. 92.
Duties of.

Q. 202. What are the duties of the prosecutor?

A. It is the duty of a prosecutor to bring all the facts of a case fully before a court in evidence, and to take care, especially where the prisoner is not assisted in his defence, that no material fact, in connection with the offence charged is omitted which

would, if given in evidence, tell in favor of the prisoner.

Q. 203. After the prisoner is brought into court what next is done? R. O. P. 25.
Challenging.

A. The order for the assembly of the court and the warrants or order appointing the president are produced and read. The names of the president and members are then read over, each officer answering "here, sir," and the prisoner is asked if he objects to any of them. This is called challenging them.

Q. 204. Should a prisoner avail himself of his right to challenge the president or any member of the court, what proceedings take place? A. A. 51.
Procedure on
challenge.

A. If the objection is to the president, 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. 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 be filled by another officer.

Q. 205. What is the first step after the court is properly constituted? R. O. P. 26, 27.
31.

A. The members of the court are sworn and also the judge advocate (if any), all officers attending for the purpose of instruction, shorthand writers, and interpreters. (See forms, pages 131, 132). The prisoner is arraigned on the charges against him and required to plead separately to each charge.

Judge advocate general.

Q. 206. Who is the judge advocate general?

A. A civilian lawyer and a member of the Privy Council, to whom all proceedings of general courts martial which must be confirmed by the Sovereign are sent.

Duties of.

Q. 207. What are his duties?

A. To examine into the legality of the proceedings.

R. O. P. 99.
Judge advocate.

Q. 208. Who is the judge advocate?

A. A military man appointed by the convening officer where he is authorized to do so. He represents the judge advocate general.

R. O. P. 99.
Where appointed.

Q. 209. On what courts is he appointed?

A. A judge advocate must be appointed in the case of a general, and may be appointed in the case of a district court martial.

R. O. P. 99.(B)
Officers disqualified as.

Q. 210. What officers are disqualified for acting as judge advocates?

A. Any officer who is disqualified for sitting on a court martial.

R. O. P. 101.
Powers and duties of.

Q. 211. What are the powers and duties of a judge advocate?

A. (a). A judge advocate advises both prisoner and prosecutor on all questions of law.

(b). He is responsible for informing the court of any informality or irregularity in the proceedings, and will give his advice on any matter before the court.

(c). At the conclusion of the case he will, unless both he and the court consider it unnecessary, sum up the evidence, and give

his opinion upon the legal bearing of the case before the court proceed to deliberate upon their finding.

(d). It is his duty, equally with the president, to see that the prisoner does not suffer any disadvantage from any cause, and, with the permission of the court, may call witnesses and put any questions to witnesses which may appear to him necessary to elicit the truth.

(e). He is to maintain an entirely impartial position.

Q. 212. Is a judge advocate required in the case of a field general court martial? R.O.P.103.(E)
Not required on field general C. M.

A. No.

Q. 213. May an officer be added to a court martial after the prisoner has been arraigned? R. O. P. 67.
Member not to be added to C. M. after arraignment.

A. No.

Q. 214. What is the effect of an officer being absent while any part of the evidence on the trial of a prisoner is being taken? R. O. P. 67.
Members temporarily absent

A. He can take no further part in the trial.

Q. 215. Are witnesses permitted to be in court when not under examination? R. O. P. 79.
Witnesses to be out of court

A. No.

Q. 216. At what stage of the proceedings do they withdraw? When to withdraw.

A. After the members of the court are sworn and before the prisoner is arraigned.

Q. 217. When a prisoner is called upon to plead, what courses are open to him? R.O.P.32,34,35
Prisoner pleading.

A. He may plead:—

(1). Not guilty.

(2). Guilty.

(3). Refuse to plead.

(4). Object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with the Rules of Procedure.

(5). Offer a special plea to the general jurisdiction of the court.

R. O. P. 34.
Objection by
prisoner,

Q. 218. What course is pursued should the prisoner object to the charge or plead to the general jurisdiction of the court?

A. The court may disallow the objection, or allow it and report to the convening officer, and, after hearing any evidence produced in support of the special plea or by the prosecutor in reply, may allow, or overrule the plea, or refer the point to the convening authority.

R. O. P. 33.
If prisoner's
objection al-
lowed.

Q. 219. Should the court allow the prisoner's objection to the charge, has the convening authority power to amend it?

A. Yes, he may either direct a new trial to be commenced, or amend the charge, and order the trial to proceed with such amended charge after due notice to the prisoner.

Special pleas.

Q. 220. Give examples of the special pleas usually offered to the general jurisdiction of the court?

A. Some of the commonest are:

(a). That the court has no jurisdiction over the prisoner.

(b). That the prisoner is not amenable to military law,

- (c). That the court is not legally constituted.
- (d). That the prisoner is only triable by a higher court.
- (e). Lapse of time of limitation.
- (f). That the prisoner has already been tried for the offence, or punished by his commanding officer.
- (g). Condonation.

Q. 221. What is meant by "condonation" ?

Meaning of "condonation."

A. Such acts as intentionally putting arms in a prisoner's hands for duty, or releasing a prisoner from confinement with a full knowledge of the circumstances.

Q. 222. Must any objection or special plea be disposed of before the trial proceeds ?

Disposal of objections before trial.

A. Yes.

Q. 223. Should the prisoner plead "guilty" what should the court ascertain before recording the plea ?

R. O. P. 35. Duty of court on plea of "guilty."

A. That the prisoner understands the nature of the charge to which he has pleaded "guilty," and should inform him of the general effect of that plea, and in particular of the difference in the procedure which will be made by that plea.

Q. 224. Is any evidence taken when a prisoner pleads "guilty" ?

R.O.P.36(C.E.) Taking evidence.

A. If there is a summary of evidence it should be annexed to the proceedings, and, if there is not, the court should take sufficient evidence to enable them to determine the sentence, and the confirming officer to know all the circumstances connected with the offence.

R.O.P. 36.(D.)
Witnesses as
to character.

Q. 225. Is a prisoner who pleads "guilty" allowed to call witnesses?

A. He may call witnesses as to his character, and may make a statement in mitigation of punishment, but no other address will be allowed.

R. O. P. 36.
Points in miti-
gation of pun-
ishment.

Q. 226. Respecting what point should great care be exercised?

A. That everything brought forward in mitigation of punishment is properly recorded.

R. O. P. 35.
Refusing to
plead.

Q. 227. If a prisoner should refuse to plead what is done?

A. A plea of "not guilty" is to be recorded.

R. O. P. 38-9.
Plea of "not
guilty."

Q. 228. Should a prisoner plead "not guilty" how does the trial proceed?

A. (1) The prosecutor may, if he desires, make an opening address.

(2) The evidence for the prosecution is then taken.

(3) At the close of the evidence for the prosecution, the prisoner will be asked if he intends to call any witnesses other than witnesses as to character.

If he states that he does not,—

(4) The prosecutor may address the court a second time, for the purpose of summing up the evidence.

(5) The prisoner will be asked if he has anything to say in his defence, and may address the court.

(6) The prisoner may call witnesses as to his character.

- (7) The prosecutor may produce, in reply to the witnesses as to character, proof of former convictions and entries in the defaulter's book, but he may not again address the court.

If the prisoner states that he intends to call witnesses other than witnesses as to character the procedure will be: R. O. P. 40,
If prisoner
calls witnesses

- (5) The prisoner will be asked if he has anything to say in his defence, and may address the court.
- (6) The prisoner may call his witnesses, including witnesses as to character.
- (7) After the evidence of all the witnesses for the defence has been taken the prisoner may again address the court.
- (8) The prosecutor will be entitled to address the court in reply.

Friend of Prisoner and Counsel.

Q. 229. May a prisoner have a person to assist him during the trial? R. O. P. 85.
Prisoner's
friend.

A. Yes, whether a legal adviser or any other person.

Q. 230. What may such person do?

A. He may advise the prisoner on all points, and, if an officer subject to military law, has the same rights and duties as are conceded to counsel under the rules. Privileges of
friend.

Q. 231. Are counsel allowed to appear at general courts martial? R. O. P. 86.
Counsel.

A. Yes, either on behalf of the prosecutor or of the prisoner.

R. O. P. 87. (C.) *Q. 232. What rights has a counsel so appearing ?*
Rights of.

A. The same right as the prosecutor or prisoner for whom he appears, to call, and orally examine, cross-examine, and re-examine witnesses, to make any objection or statement, to address the court, to put in any plea, to inspect the proceedings, and the same rights otherwise as the person for whom he appears.

Evidence.

R. O. P. 77. *Q. 233. How is the attendance of witnesses pro-*
Witnesses, cured at a court martial ?
attendance of.

A. Witnesses not subject to military law may be summoned to attend by order under the hand of the convening officer, the president of the court, the judge advocate, or the commanding officer of the prisoner. (See form, page 108.) Witnesses subject to military law are ordered to attend by the proper military authority.

How wit-
nesses are
sworn.

Q. 234. How are witnesses sworn ?

A. Whilst being sworn a witness removes his cap and glove, and when sworn he, if a military man, puts them on again. He remains standing, unless sick, &c., when he may be given a seat.

R. O. P. 81.
Examination
of.

Q. 235. How is a witness examined ?

A. Every question is put to a witness orally by the prosecutor, prisoner, or judge advocate, without the intervention of the court. His reply is addressed to the court.

R. O. P. 93.
Evidence, how
taken.

Q. 236. How is the evidence of a witness to be taken down ?

A. It should be taken down in a narrative form in

as nearly as possible the words used, but, when considered material, the question and answer are to be taken down verbatim.

Q. 237. What opportunity is afforded a witness of explaining or correcting his evidence? R. O. P. 81.
Correcting
evidence.

A. It should be read over to him after he has given all his evidence and before he leaves the court.

Q. 238. What is necessary for the reception of evidence? R. O. P. 72.
Reception of
evidence.

A. That it is relevant to the facts stated in the charge and admissible according to the rules of courts of ordinary criminal jurisdiction.

Q. 239. What course is pursued where a civilian refuses to attend before a court martial or, after attending, refuses to take an oath, or to produce a document in his possession, or to answer a question, or where a civilian is guilty of contempt towards a court martial, or interrupts or disturbs the proceedings, or prints observations or uses words calculated to influence the members or witnesses, or to bring such court into disrepute? A. A. 126.
Refusal of
civilian to
attend.

A. The president may certify the offence to any court of competent jurisdiction, and the court, upon proof of the offence, may punish such witness or person in like manner as if he had committed such offence in a proceeding in that court.

Findings and Sentence.

Q. 240. How is the finding of the court to be considered? R. O. P. 42.
Finding how
considered.

A. The court will deliberate on their finding with closed doors. The opinion of each member is to be taken separately on each charge, commencing with the junior member.

R. O. P. 43.
How recorded.

Q. 241. How are the findings to be recorded ?

A. Simply as a finding of "guilty," "not guilty," or of "not guilty and honorably acquit him of the same."

A. A. 53.
If votes equal.

Q. 242. In the case of an equality of votes on the finding has the president a casting vote ?

A. No, the prisoner is deemed to be acquitted.

A. A. 54.
"Acquittal,"
finding of.

Q. 243. Is the finding of acquittal subject to revision, or does it require to be confirmed ?

A. No; and if it relates to the whole of the offences is to be pronounced at once in open court, and the prisoner discharged.

R. O. P. 45.
"Guilty,"
finding of.

Q. 244. When the finding on any charge is "guilty," what is the course of procedure ?

A. For the guidance of the court in determining their sentence, and of the confirming authority in considering the sentence, the court may take evidence of and record the prisoner's character, age, service, and rank, and the length of time he has been in arrest or in confinement on any previous sentence, and any deferred pay, military decoration, or military reward of which he may be in possession or to which he is entitled, and which the court can sentence him to forfeit.

A. A. 56.
Conviction of
lesser offence.

Q. 245. Is conviction of a lesser offence permissible on a charge of a greater ?

A. Yes, for instance a prisoner charged with desertion may be found guilty of attempting to desert or of being absent without leave.

Q. 246. In the case of an equality of votes on the sentence, has the president a second or casting vote?

A. A. 53.
Equality of votes on sentence.

A. Yes, he has a casting vote on the sentence or any question arising from the commencement of the trial except the finding.

Q. 247. In passing sentence what is a court martial required to regard?

Q. R. VI. 99.
Points to be considered on passing sentence.

A. A court martial in passing sentence will have regard primarily to the nature and degree of the offence and the previous character of the prisoner as proved in evidence. The court will further consider if any circumstances have been disclosed by the evidence in extenuation or aggravation of the offence.

Q. 248. Is there any precise rule laid down for sentences to be awarded?

Q. R. VI. 99.
No rule for sentences.

A. No, sentences must vary according to the requirements of discipline. In ordinary circumstances and for a first offence a sentence should be light, and it should be remembered that, except with hardened offenders, short sentences are likely to be as effective as long ones. For the lesser class of offences usually tried by district courts martial it may be taken as a guide that, in case of a first conviction a sentence of imprisonment should rarely exceed three months.

Q. 249. In awarding imprisonment what rules are to be observed in framing the sentence?

Q. R. VI. 101.
Rules in framing sentence.

A. (1.) Terms of imprisonment less than six months will be awarded in days.

(2.) Terms of imprisonment of one and two years will be awarded in years.

(3). Other terms of imprisonment will be awarded in months, or, if required, in months and days. Months must be stated to be calendar months.

R. O. P. 49.
Transmitting
for confirma-
tion.

Q. 250. What is the duty of the president upon the court awarding the sentence ?

A. He shall date and sign the sentence, and such signature shall authenticate the whole of the proceedings, and the proceedings upon being signed by the judge advocate, if any, shall be at once transmitted for confirmation.

Confirmation and Revision.

R. O. P. 95.
By whom sent.

Q. 251. By whom are the proceedings to be sent for confirmation ?

A. By the judge advocate if there is one, if not by the president.

To whom.

Q. 252. To whom are they sent ?

A. To such person as may be directed by the order convening the court. Where the court is a regimental court martial the proceedings are to be at once sent by the president to the commanding officer.

R. O. P. 98.
Lost proceed-
ings.

Q. 253. Should the proceedings happen to be lost what course is pursued ?

A. (a.) A copy, certified by the judge advocate or president, may be used.

(b). If there is no such copy and sufficient evidence of the charge, finding, sentence and transactions of the court can be procured, that evidence may, with the assent of the prisoner, be accepted in lieu of the original proceedings or part thereof lost.

(c). Should the prisoner refuse such assent he may be tried again.

Q. 254. What is the province of the confirming officer ?

Q. R. Sec. VI.
104. Province of confirming officer.

A. It is the province of the confirming officer by a proper exercise of his powers of commutation or mitigation where necessary, to regulate the amount of punishment awarded by courts martial in his command, and to take care that no sentence is greater than the interests of discipline and the merits of the particular case require, and that the findings and sentences are legal.

Q. 255. What may the confirming authority do in the case of findings or sentences requiring confirmation ?

R. O. P. 50.
Powers of confirming officer.

- A. 1. He may direct the re-assembly of the court for revision of the finding and sentence, or either of them, stating the reasons for such revision ; and
2. May confirm or refuse confirmation, and may add any remarks on the case which he may think fit and such confirmation and remarks shall be entered in and form part of the proceedings.

Q. 256. When the finding or sentence is sent back for revision may further evidence be taken ?

R. O. P. 51.
Reassembly of court on finding being sent back.

A. No, the court re-assembles in closed court and may not receive further evidence.

Q. 257. When the finding is sent back for revision, what is done when the court do not adhere to their former finding ?

R. O. P. 51.
If court do not adhere to finding.

A. They revoke their finding and sentence and record a new finding, and, if such new finding involves a sentence, pass sentence afresh.

R. O. P. 51.
When sentence
alone is sent
back.

Q. 258. Where the sentence alone is sent back for revision, may the court revise the finding?

A. No.

A. A. 54.
How often
may be sent
back.

Q. 259. How often may the finding and sentence, or either of them, be sent back for revision?

A. Not more than once.

A. A. 57.
Confirming
authority may
alter punish-
ment.

Q. 260. May the confirming authority, when confirming the sentence of any court martial, alter the punishment in any way?

A. He may mitigate or remit the punishment or commute it for any less punishment or punishments which might have been awarded. He may, also, suspend for such time as seems expedient the execution of a sentence.

A. A. 57 (2).
Mitigating
sentence after
confirmation.

Q. 261. After a sentence has been confirmed can any person mitigate, remit or commute the punishment so awarded?

A. Yes, Her Majesty or the commander-in-chief or the officer commanding the district or station or the officer commanding the forces in any colony, provided that such officer does not hold a command inferior to that of the confirming officer, unless he has been properly authorized to exercise such power.

Penal Deductions from Pay.

A. A. 137.
In the case of
an officer.

Q. 262. What penal deductions may be made from the ordinary pay of an officer?

- A. 1. All ordinary pay due to an officer absent without leave, unless a satisfactory explanation has been given through his commanding officer.
2. The sum required to make good any expenses, loss, damage, &c., occasioned by any offence committed by him.
3. The sum required to make good the pay of any officer or soldier, which he has unlawfully retained or refused to pay.

Q. 263. What penal deductions may be made from the ordinary pay of a soldier ?

A. A. 138.
In the case of a soldier.

- A. 1. All ordinary pay for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of imprisonment or detention on a charge of which he is afterwards convicted.
2. All ordinary pay while in hospital on account of sickness caused by an offence committed by him.
3. The sum necessary to make good any expenses, loss, damage, &c., occasioned by any offence committed by him.
4. Any loss of or damage done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decorations, or to any buildings or property.
5. Where a soldier at the time of his enlistment belonged to the auxiliary forces, any sum for which he was liable as a member of such force.

6. When a soldier's liquor ration is stopped on board ship, the sum equivalent to such ration, not exceeding one penny a day for twenty-eight days.
7. The sum required to pay a fine awarded by a court martial, his commanding officer, or a civil court.
8. The duly authorized sum required to be paid for the maintenance of his wife or child, or of any bastard child, or toward the cost of any relief given by way of a loan to his wife or child.

A. A. 138.
Not less than
one penny a
day to be left.

Q. 264. May the whole of a soldier's pay be taken to pay any compensation, fine or sum ordered to be paid as above ?

A. No, such deductions must not exceed such sum as will leave to the soldier, after paying for his messing and washing, less than one penny per day.

Imprisonment.

A. A. 63.
How carried
out.

Q. 265. How is a sentence of imprisonment to be carried out ?

A. Either in military custody or in a public prison, or partly in one way and partly in the other.

A. A. 63 (2).
Warrant for
sending to
public prison.

Q. 266. What is sufficient warrant for the transfer of a military prisoner to a public prison ?

A. The order of the committing authority. (See form, page 126.)

Prisoners,
how dealt
with.

Q. 267. How are military prisoners in a public prison to be dealt with ?

A. They are to be confined, kept to hard labor,

and otherwise dealt with in the same manner as an ordinary prisoner under a like sentence of imprisonment.

Court of Inquiry other than Courts of Inquiry Respecting the Illegal Absence of Soldiers.

Q. 268. Is a court of inquiry a judicial body? R. O. P. 123.

A. No, it has no judicial power, and is in strictness not a court at all, but an assembly of persons directed by a commanding officer to collect evidence with respect to a transaction into which he cannot conveniently himself make inquiry. (D).
Q. R. VI. 118.
Not a judicial body.

Q. 269. Of what number and rank are the officers? R. O. P. 123

A. The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation. Three members, the senior acting as president, will, in ordinary cases, be found sufficient. (B). Number and rank.

Q. 270. By what is the court guided in its proceedings? R. O. P. 123.
(C). How guided.

A. By the written instructions of the officer who assembled the court. These instructions should be full and specific, and must state the general character of the information required from the court in their report.

Q. 271. Are officers or soldiers to be present when the inquiry affects their character? R. O. P. 123 (F).
Presence of persons affected.

A. Yes; full opportunity must be afforded to such officer or soldier of being present, of making any statement he may wish to make, of cross-examining witnesses, and of producing any witnesses in defence of his character.

R.O.P.123(G).
Witnesses. *Q.* 272. Has a court of inquiry the power of compelling the attendance of witnesses?

A. No.

Q. 273. May the evidence be taken on oath?

A. No.

R.O.P.123 (H)
Opinion. *Q.* 274. Is a court of inquiry to express an opinion on the conduct of any officer or soldier?

A. No; and the proceedings cannot be given in evidence against an officer or soldier, but such officer or soldier, if afterwards tried by court martial, is entitled to a copy of the proceedings of the court of inquiry.

R.O.P. 123(I).
Disposal of
proceedings. *Q.* 275. What is done with the proceedings of a court of inquiry?

A. They are forwarded by the president to the commanding officer who assembled the court, who, on his own responsibility, will form such opinion as he thinks just, and, if such opinion is adverse to the character of any officer or soldier, such adverse opinion is to be communicated to the officer or soldier against whom it has been given.

R.O.P.123(K).
Re-assembly
of court. *Q.* 276. How often may the court be reassembled?

A. As often as the convening officer may direct.

Courts of Inquiry for the Purpose of Determining the Illegal Absence of Soldiers.

A. A. 72.
R. O.P. 124.
Witnesses. *Q.* 277. May a court of inquiry respecting the illegal absence of soldiers require the attendance of witnesses?

A. Yes,

Q. 278. Are the members sworn ?

R.O.P.124(E).
Members not sworn.

A. No.

Q. 279. Are the witnesses sworn ?

R.O.P.124(E).
Witnesses are sworn.

A. Yes; an oath is administered to the witnesses as if the court were a court martial.

Q. 280. How does the court pursue the inquiry ?

A. A. 72,
R. O. P. 124
Proceedings.

A. The evidence given respecting the fact of such absence and the deficiency (if any) in the arms, ammunition, equipments, instruments, regimental necessaries or clothing of the soldier is taken down in writing, and, at the end of the proceedings, a declaration is made of the conclusions at which the court has arrived.

Q. 281. Before declaring the deficiency of any arms, &c., of what should the court be satisfied ?

Q. R. VI. 121.
Proof of possession of articles.

A. The court, before declaring the deficiency of any arms, &c., should satisfy itself, by evidence, that the absentee was within a reasonable period of the date of absenting himself in possession of the articles they declare to be deficient.

Q. 282. Are the proceedings preserved ?

R.O.P.124(C).
Proceedings not preserved.

A. No, the commanding officer enters in the regimental books a record of the declaration of the court, and the original proceedings are destroyed.

Q. 283. What is the effect of such record ?

A. A. 72 (2).
Effect of entry in regimental books.

A. If the absent soldier does not afterwards surrender, or is not apprehended, such record will have the legal effect of a conviction by court martial for desertion.

CHAPTER IV.

EVIDENCE.

Meaning of
"Evidence."

284. The word evidence, considered in relation to law, includes all the legal means, exclusive of mere argument, which tend to prove or disprove any matter of fact, the truth of which is submitted to judicial investigation. The true question in trials of fact is not, whether it is possible that the testimony may be false, but whether there is sufficient probability of its truth; that is, whether the facts are proved by competent and satisfactory evidence.

Competent
evidence.

285. By *competent* evidence is meant that which the law requires, as the fit and appropriate proof in the particular case, such as the production of a writing, where its contents are the subject of enquiry.

Satisfactory
evidence.

286. By *satisfactory* evidence, which is sometimes called *sufficient* evidence, is intended, that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt.

Duty of the
Court.

287. It is the duty of the court to decide all questions as to the admissibility of evidence.

Characteristics
of witnesses.

288. It is obvious that in the hasty progress of a trial it is frequently difficult, and sometimes impossible, to ascertain, with any thing like certainty what characters the witnesses respectively deserve for honesty and intelligence, and how far they are actuated by interested, malignant, or other improper

motives. On these heads considerable doubt must almost always exist; although a rigid cross-examination, when skilfully applied, will certainly throw much light upon the subject; and a careful attention to the demeanor of the witness will furnish a no less valuable guide. Thus, while simplicity, minuteness, and ease are the natural accompaniments of truth, the language of witnesses coming to impose is usually labored, cautious and indistinct.

289. With respect to policemen, constables, and others employed in the suppression and detection of crime, their testimony against a prisoner should usually be watched with care; not because they intentionally pervert the truth, but because their professional zeal, fed as it is by an habitual intercourse with the vicious, and by the frequent contemplation of human nature in its most revolting form, almost necessarily leads them to ascribe to actions the worst motives, and to give a coloring of guilt to facts and conversations, which are, perhaps, in themselves consistent with perfect rectitude. "That all men are guilty until they are proved innocent" is naturally the creed of the police; but it is a creed which finds no sanction in a court of justice.

Testimony
of policemen,
constables, &c.

290. Perhaps the testimony which least deserves credit is that of *skilled witnesses*. These gentlemen are usually required to speak, not to facts, but to *opinions*; and, when this is the case, it is often surprising to see with what facility, and to what extent, their views can be made to correspond with the wishes or the interests of the parties who call them.

Skilled
witnesses.

They do not, indeed, wilfully misrepresent what they think ; but their judgments become so warped by regarding the subject from one point of view that, even when conscientiously disposed, they are incapable of expressing a candid opinion.

Evidence as to
dates, time,
&c.

291. Experience teaches the danger of relying implicitly on the evidence of even the most conscientious witnesses respecting dates, times, distances, foot-prints, handwriting, admissions, loose conversations, and questions of identity. Yet these are the links in the chain of circumstances, by which guilt is in general sought to be established.

Presumptive
evidence.

292. Presumptive evidence is usually divided into two branches, namely, *presumptions of law*, and *presumptions of fact*.

Presumptions
of law.

293. *Presumptions of law* consist of those rules, which, in certain cases, either forbid or dispense with any ulterior inquiry. They are founded either upon the first principles of justice, or the laws of nature, or the experienced course of human conduct and affairs, and the connection usually found to exist between certain things.

Classes of
presumptions
of law.

294. Presumptions of law are divided into two classes, namely, *conclusive* and *disputable*.

Conclusive
presumptions
of law.

295. *Conclusive*, or absolute presumptions of law, are rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise. For instance, a sane man of the age of discretion is conclusively presumed to contemplate the natural and probable *consequences*

of his own acts; and therefore the intent to kill is conclusively inferred from the deliberate, violent use of a deadly weapon.

296. *Disputable* presumptions are presumptions at law which may always be overcome by opposing proof. The rules in this class of presumptions do not, as in the former class, forbid all further evidence, but only dispense with it till some proof is given on the other side to rebut the presumption raised. Thus, as men do not generally violate the penal code, the law presumes every man *innocent*; but some men do transgress it, and therefore evidence is received to repel the presumption. This presumption, which, in legal phraseology, "gives the benefit of the doubt to the accused," is so cogent that it cannot be repelled by any evidence short of what is sufficient to establish the fact of criminality with moral certainty. In mere civil disputes, when no violation of the law is in question, and no legal presumption operates in favor of either party, the preponderance of probability, due regard being had to the burden of proof, may constitute sufficient ground for a verdict, but to affix on any person the stigma of crime requires a higher degree of assurance; and the evidence must be such as to exclude from the mind all reasonable doubt.

Disputable
presumptions
of law.

297. Though the general presumption of law is in favor of innocence, yet, as men seldom do unlawful acts with innocent intentions, the law presumes every act, in itself unlawful, to have been wrongly intended, till the contrary appears. Thus, on a charge of murder, malice is presumed from the fact of killing,

Presumption
of malice on
charge of
murder.

unaccompanied by circumstances of extenuation ; and the burthen of disproving the malice is thrown upon the accused.

Possession of
stolen prop-
erty.

298. The possession of stolen property *recently* after the commission of a theft is *prima facie* evidence that the possessor was either the thief or the receiver, according to the other circumstances of the case ; and this presumption, when unexplained, either by direct evidence or by the character and habits of the possessor, or otherwise, is usually regarded as conclusive. The question as to what amounts to recent possession varies according as the stolen article is or is not calculated to pass readily from hand to hand.

Rules Governing the Production of Evidence.

Rules of
evidence.

299. The production of evidence is governed by certain principles which may be treated under four general rules:

1st. The evidence must correspond with the allegations, but the substance only of the issues need be proved.

2nd. The evidence must be confined to the points in issue.

3rd. The burthen of proof lies on the party holding the substantial affirmative.

4th. The best evidence of which the case is susceptible must always be produced.

Before Court-
martial.

300. With regard to the first it is only necessary to say that charges brought before a court martial are not bound by the technical formalities which

prevail in other courts of law, but they must be sufficiently specific to enable the prisoner to know what he has to answer and the court to know what they have to enquire into. Great care must be taken in framing them, both to see that no important point is left out, and also that nothing is inserted in the charge which is not likely to be supported by the evidence. One of the objects of the charge sheet is to apprise the prisoner of the specific nature of the charges on which he is to be tried, and this object would be defeated if the prosecutor were at liberty to prove facts essentially different from those therein stated, but "where the court are of opinion that the facts which they find to be proved in evidence, differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the prisoner in his defence, they may, instead of a finding of not guilty, record a special finding. The special finding may find the prisoner guilty on a charge, subject to the statement of exceptions or variations annexed to the finding." (R. O. P. 43.)

Confining Evidence to Points in Issue.

The second general rule which governs the production of testimony is that *the evidence must be confined to the points in issue.*

301. This rule is founded on common-sense and justice, and applies with even greater force to criminal than to civil proceedings; for as one of the

Confining
evidence to
point in issue,

chief objects of an indictment, or charge sheet, is to afford distinct information to the prisoner of the specific charge which is about to be brought against him, the admission of any evidence of facts unconnected with that charge would be clearly open to the serious objection of taking the prisoner by surprise. No man should be bound, at the peril of life or liberty, fortune or reputation, to answer at once and unprepared for every action of his life. Few even of the best of men would choose to submit to such an ordeal. If, therefore, on a charge of burglariously entering a house on a certain day and stealing goods therein, the prosecutor fails in proving that any larceny was on that occasion committed, he cannot abandon the charge of burglary, and then proceed to shew that the prisoner stole some of the articles on a previous occasion; because, though time is not usually a material allegation, yet the prisoner, having been led to suppose that he was to meet a charge of burglary, cannot be expected to come prepared to prove his innocence with respect to a distinct offence, committed, if at all, at a totally different time. So, an admission by the prisoner, that he has, at another time, committed an offence similar to that with which he is charged, and that he has a tendency to perpetrate such crimes, cannot be received.

When felonies are connected evidence of one admissible as proof of another,

302. But when felonies are so connected together as to form part of one entire transaction, evidence of one may be given to show the character of the other. For instance, when a man committed three burglaries in one night, and left at one of the houses

property taken from another, the three felonies were considered so connected that the court heard the history of them all. On a charge of malicious shooting, if it be doubtful whether the shot was fired by accident or design, proof may be given that the prisoner at another time intentionally shot at the same person; and in charges of murder, while evidence of former menaces or quarrels will have an important tendency towards supporting the legal inference of malice, proof of expressions of kindness or of friendly acts towards the deceased will be entitled to equal weight as raising a counter-presumption.

303. To this rule may be referred the admissibility of evidence respecting the *general character* of individuals. Such evidence is tendered for the purpose either of raising a presumption of innocence or guilt, or of impeaching or supporting the veracity of a witness. The term "character," as here used, simply means "reputation" or the general credit which a man has obtained in public opinion. A witness, therefore, who is called to speak to character, in strict law must confine himself to evidence of mere general repute. This rule, in practice, is seldom strictly enforced. Aware that "the best character is generally that which is the least talked about," the judges have found it necessary to permit witnesses to give negative evidence on the subject, and to state that "they never heard anything *against* the character of the person on whose behalf they have been called." Nay, some of the judges have gone so far as to assert that evidence in this negative

Evidence
as to general
character.

form is the most cogent proof of a man's good reputation.

Evidence of general character where accused charged with particular crime.

304. When the point in issue is whether the accused has committed a particular criminal act, evidence of his general character is obviously entitled to little weight, unless some reasonable doubt exists as to his guilt. The inquiry, too, must be confined,—except where the *intention* forms a material ingredient in the offence,—to the *general* character of the prisoner, and must not condescend to *particular* facts. Although the defendant, from motives of humanity, is allowed this reasonable indulgence, the prosecutor cannot, in the first instance, have recourse to the same loose testimony, for the purpose of establishing the guilt of the accused; but if, with the view of raising a presumption of innocence, witnesses to character are called for the defence, the prosecutor may then rebut this presumption, by cross-examining the witnesses, either as to particular facts, or as to the grounds of their belief.

Burthen of Proof.

By which side proof must be given.

305. A third rule which governs the production of evidence, is, *that the burthen of proof lies on the party who substantially asserts the affirmative of the issue.* This rule of convenience,—which, in the Roman law, is thus expressed: *Eri incumbit probatio, qui dicit, non qui negat*,—has been adopted in practice, not because it is impossible to prove a negative, but because the negative does not admit of the direct and simple proof of which the affirmative is capable; and moreover it is but

reasonable and just that he who relies upon the existence of a fact should be called upon to prove his own case. On the twofold ground that a prosecutor must prove every fact necessary to substantiate his charge against a prisoner, and that the law will presume innocence in the absence of convincing evidence to the contrary, the burthen of proof, unless shifted by legislative interference, will fall, in criminal proceedings, on the prosecutor, though, in order to convict, he must necessarily have recourse to negative evidence.

Best Evidence.

306. The fourth rule, which governs the production of evidence, requires that *the best evidence of which the case in its nature is susceptible* should always be presented to the court. Best evidence.

307. This rule does not demand the greatest amount of evidence which can possibly be given of any fact; but its design is to prevent the introduction of any, which, from the nature of the case, supposes that better evidence is in the possession of the party. It is adopted for the prevention of fraud; for, when better evidence is withheld, it is only fair to presume that the party has some sinister motive for not producing it, and that, if offered, his design would be frustrated. In requiring the production of the best evidence applicable to each particular fact, it is meant that no evidence shall be received which is merely substitutionary in its nature, so long as the original evidence is attainable. Thus, depositions are in general admissible only Object of this rule to prevent fraud.

after proof that the parties who made them cannot themselves be produced.

Primary and secondary evidence.

308. This rule naturally leads to the division of evidence into PRIMARY and SECONDARY. *Primary evidence* is what has just been mentioned as the best or highest evidence, or, in other words, it is that kind of proof which, in the eye of the law, affords the greatest certainty of the fact in question. Until it is shown that the production of this evidence is out of the party's power, no other proof of the fact is in general admitted. All evidence falling short of this in its degree is termed *secondary*. But, though all information must, if possible, be traced to its fountain head, yet, if there be several distinct sources of information of the same fact, it is not in general necessary to show that they have all been exhausted, before recourse can be had to secondary evidence with respect to one of them.

Substitution of oral for written evidence.

309. The cases which most frequently call for the application of this rule are those which relate to the *substitution of oral for written evidence*; and the general rule of law with respect to this subject is that *the contents of a written instrument, which is capable of being produced, must be proved by the instrument itself, and not by parol evidence*. These cases may be divided into three classes; the *first* class relating to those instruments which the law requires to be in writing; the *second*, to those contracts which the parties have put in writing; and the *third*, to all other writings, the existence or contents of which are disputed, and which are material to the issue. Where the writing does not

fall within any of these three classes, no reason exists why it should exclude oral evidence. If, therefore, a written communication be accompanied by a verbal one to the same effect, the latter may be received as independent evidence, though not to prove the contents of the writing, nor as a substitute for it.

* 310. Precisely the same rules operate to the *exclusion of writings, which the law considers as entitled to less weight* than those which might be, and consequently ought to be, forthcoming. Thus, an original document must—subject to certain exceptions—be produced at the trial, and a mere copy, however accurate, will not, in the first instance, be admissible.

Exclusion of copies.

311. It is a general rule that *secondary evidence is inadmissible, until it be shown that the production of primary evidence is out of the party's power.* With respect to documents, proof of their contents may be established by secondary evidence, first, when the original writing is destroyed or lost; secondly, when its production is physically impossible, or, at least, highly inconvenient, as in the case of inscriptions on walls, mural monuments, surveyors' marks, &c. ; thirdly, when the document is in the possession of the adverse party, who refuses to produce it; fourthly, when it is in the hands of a third party, who is not compellable by law to produce it; fifthly, when the law raises a strong presumption in favor of the existence of the document, as in the case of public officers, whose written appointments the law does not in general require to be produced ; sixthly,

When secondary evidence is inadmissible.

when the papers are voluminous, and it is only necessary to prove their general results.

Secondary
evidence of
testimony
under oath.

312. Where a witness has given his testimony under oath in a judicial proceeding, in order to render admissible secondary evidence of such testimony, it must be proved that the witness was duly sworn in some judicial proceeding, to the authority of which the party against whom the testimony is offered was legally bound to submit, and in which he might have exercised the right of cross-examination. It seems clearly to have been intended by the Legislature that the accused should be charged in the first instance with some indictable offence; that the statement of each witness should then be made under the sanction of an oath or affirmation, administered by the magistrate before whom the charge is preferred; that such oath or affirmation should be administered in the presence of the accused; that the statement should be made entirely in his presence, and that he should have full opportunity for cross-examination; that the whole of the statement elicited, either by examination or by cross-examination, and not merely so much as the judge might consider material, should be reduced to writing, in the first person, and in the very words of the witness; that the deposition, when completed, should be read over to the witness, and be signed by him, as a token of his assenting to its correctness; that the depositions should be signed by the justice, and that they should be transmitted by him—together with the written information, the statement of the accused, and the recognizance of bail, if any such

documents should exist,—to the proper officer of the court in which the trial is to be had, before or at the opening of such court.

Hearsay Evidence.

313. As evidence afforded by our own senses is seldom attainable in judicial trials, the law is satisfied with requiring the next best evidence, namely, the testimony of those who can speak from their own personal knowledge. It is requisite that whatever facts the witness may speak to he should be confined to those lying within his own knowledge, whether they be things said or done, and should not testify from information given by others, however worthy of credit they may be. This rule of exclusion has been recognised as a fundamental principle of the law of evidence ever since the time of Charles the Second ; and so strictly is it enforced that it is even held applicable to cases in which, if the declaration be rejected, no other evidence can possibly be obtained ; as, for example, where the declaration purports to be that of the only eye-witness of the transaction, and he is since dead.

Hearsay evidence.

314. The term *hearsay* is used with reference to what is *done* or *written*, as well as to what is spoken; and in its legal sense it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competency of some other person. That this species of evidence is not given upon oath, that it cannot be tested by cross-examination, and that it supposes some better tes-

What the term "hearsay" denotes.

timony which might be adduced in the particular case, are not the sole grounds for its exclusion. Its tendency to protract legal investigations to an embarrassing and dangerous length, its intrinsic weakness, its incompetency to satisfy the mind as to the existence of the fact, and the frauds which may be practised with impunity under its cover, combine to support the rule that hearsay evidence is inadmissible.

Care to be taken in distinguishing between hearsay and original evidence.

315. In considering this branch of the law of evidence, care must be taken to *distinguish* clearly between hearsay and that which is deemed *original*. For it does not follow that, because the writings or words in question are those of a third person not under oath, they are therefore to be considered as hearsay. On the contrary, it often happens that the very fact in controversy is, whether certain things were written, or spoken, and *not* whether they were *true*; and at other times the oral or written statements tendered in evidence may prove to be the natural or inseparable concomitants of the principal fact in controversy. In either of these cases it is obvious that the writings or words are not within the meaning of hearsay, but are original and independent facts, admissible in proof of the issue.

Cases to which doctrine extends.

316. Not only does this doctrine apply whenever the fact that a certain communication was made, and not its truth or falsehood, is the point in controversy; but it extends also to those cases where the *truth* of the fact in dispute will be inferred from the *existence* of another fact which is under investigation. Upon

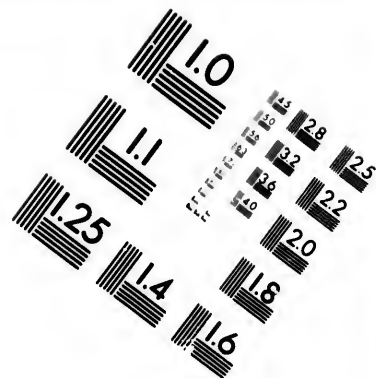
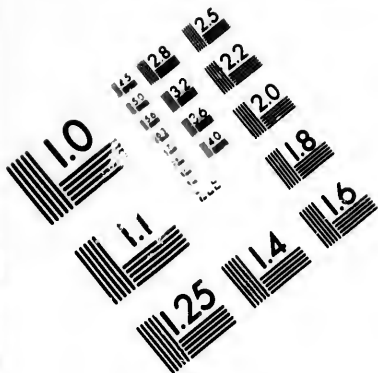
these grounds it is considered that evidence of *general reputation, reputed ownership, public rumor, general character, general notoriety*, and the like, though composed of the speech of third persons not under oath, is original evidence and not hearsay; the immediate subject of inquiry being the concurrence of many voices, which raises a presumption that the fact in which they concur is true.

317. Whenever the *bodily or mental feelings* of an individual are material to be proved, the usual expressions of such feelings, made at the time in question, are also original evidence. Thus on a trial for murder by poisoning, statements made by the deceased in conversation, shortly before he took the poison, have been received in evidence for the purpose of proving the state of his health at the time; and, on the same ground, it has frequently been held in actions or indictments for assault, that what a man has said about himself to his surgeon was evidence to show what he suffered by reason of the assault. In no case, however, can the *particulars* of the complaint be disclosed by witnesses for the Crown, either as original, or as confirmatory evidence, but the details of the statement can only be elicited by the prisoner's counsel on cross-examination.

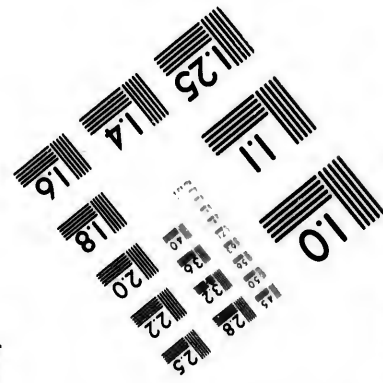
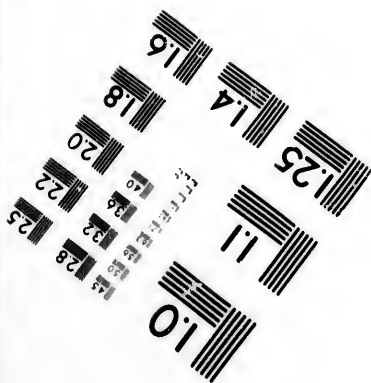
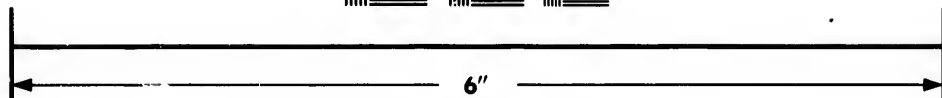
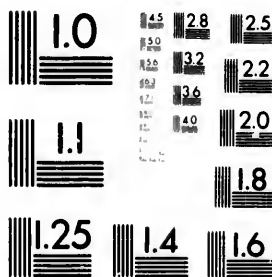
Where bodily or mental feelings are material to be proved.

318. The rule rejecting hearsay has been relaxed:—first in cases relating to matters of public and general interest, such as the origin of ancient rights, etc;—secondly, those relating to pedigree; thirdly, those relating to ancient possession;—fourthly, declarations against interest;—fifthly, declarations

Where rule has been relaxed.

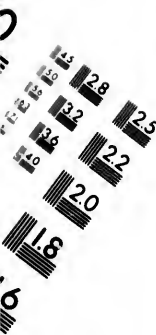


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in the course of office or business ;—and, lastly, dying declarations.

Dying declarations admissible only in cases of homicide.

319. With regard to the latter class of cases it is now settled law that proof of this description is admissible only in the single instance of *homicide* where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declaration. It is also essential to the admissibility of these declarations ; first, that at the time when they were made the declarant should have been in *actual danger of death* ; secondly, that he should have had a *full apprehension of his danger* ; and, lastly, that *death should have ensued*.

Confessions.

Confessions of guilt to be received with caution.

320. With regard to confessions of guilt in criminal prosecutions, it may be observed that the evidence of *oral* confessions of guilt ought to be *received with great caution*. For not only does considerable danger of mistake arise from the misapprehension or malice of witnesses, the misuse of words, the failure of the party to express his own meaning, and the infirmity of memory ; but the zeal which generally prevails to detect offenders, especially in cases of aggravated guilt, and the strong disposition which is often displayed by persons engaged in pursuit of evidence, to magnify slight grounds of suspicion into sufficient proof, together with the character of witnesses, who are sometimes necessarily called in cases of secret and atrocious crime,—all tend to impair the value of this kind of evidence, and sometimes lead to its rejection.

321. In addition to these sources of distrust, which are often sufficient to raise a serious doubt whether the confession given in evidence was actually made by the prisoner in the words, or to the effect, stated by the witnesses, there is yet another reason why caution should be employed in receiving and weighing confessions. The statements, though made as deposed to, may be *false*. The prisoner, oppressed by the calamity of his situation, may have been induced by motives of hope or fear to make an untrue confession; and the same result may have arisen from a morbid ambition to obtain an infamous notoriety, from an insane or criminal desire to be rid of life, from a reasonable wish to commence a new career in another hemisphere, from an almost pardonable anxiety to screen a relative or a comrade, or even from the delusion of an overwrought and fantastic imagination.

322. Still the actual instances of *false* confessions of crime are very rare. Indeed, all reflecting men are now generally agreed, that *deliberate and voluntary confessions of guilt, if clearly proved*, are among the most effectual proofs in the law; their value depending on the sound presumption that a rational being will not make admissions prejudicial to his interest and safety, unless when urged by the promptings of truth and conscience. Such confessions, therefore, so made by a prisoner to any person, at any time, and in any place, are at common law receivable in evidence, while the degree of credit due to them must be estimated according to the particular circumstances of each case.

Other sources
of distrust
respecting
confessions.

Deliberate
confessions,
clearly proved,
effectual
proofs.

Classes of confessions.

323. Confessions may be divided into two classes, namely, *judicial* and *extra-judicial*.

Judicial confessions.

324. *Judicial confessions* are those which are made before the magistrate, or in court, in the due course of legal proceedings; and it is essential that they be made of the free will of the party, and with full knowledge of the nature and consequences of the confession.

Extra-judicial confessions.

325. *Extra-judicial confessions* are those which are made by the party elsewhere than before a magistrate, or in court; this term embracing not only *express* confessions of crime, but all those admissions and acts of the accused from which guilt may be implied. All voluntary confessions of this kind are receivable in evidence, on being proved like other facts.

The whole of what prisoner said to be considered.

326. In the proof of confessions, *the whole of what the prisoner said* on the subject, at the time of making the confessions should be taken together. This rule is the dictate of reason, as well as humanity; for, unless the whole be considered, the true meaning of the part which is evidence against him cannot be ascertained.

Confession to be voluntarily made.

327. Before any confession can be received in evidence in a criminal case, it must be shown to have been *voluntarily* made; for a confession, forced from the mind by the flattery of hope, or by the torture of fear, comes in so questionable a shape, when it is to be considered as the evidence of guilt, that no credit ought to be given to it; and therefore it is rejected. It is very clear, that if the promise

or threat be made by any one *having authority* over the prisoner in connection with the prosecution, as, for instance, by the prosecutor, the master or mistress of the prisoner when the offence concerns such master or mistress, the constable or other officer having him in custody, a magistrate or the like, the confession will be rejected as not being voluntary.

328. In order to exclude a confession, the inducement, whether it assume the shape of a promise, a threat, or mere advice, must have reference to the prisoner's *escape from the criminal charge* against him, and must be made by some person who had power to relieve him.

Inducement of escape necessary to exclude confession.

329. If no inducement has been held out relating to the charge, it matters not *in what way* the confession has been obtained; for whether it were induced by a solemn *promise of secrecy*, even confirmed by an oath; or by reason of the prisoner having been made *drunken*; or even by any *deception* practised upon him, or false representation made to him for that purpose; it will be equally admissible, however much the mode of obtaining it may be open to censure, or may render the statement itself liable to suspicion. Much less will a confession be rejected, merely because it has been elicited by *questions* put to the prisoner, whether by a magistrate, officer, or private person; and the form of the question is immaterial, even though it assumes the prisoner's guilt.

If no inducement held out, it matters not how confession obtained.

Confession
admissible if
prisoner at
full liberty to
act and judge
for himself.

: 30. A voluntary confession, too, is admissible, to whomsoever it may have been made, though it does not appear that the prisoner was *warned* that what he said would be used against him; nay, though it appears on the contrary that he was not so warned. In most cases, indeed, it may be advisable and proper to caution the prisoner in general terms, that any confession he makes will be admissible against him at the trial, and can do him no service; because if it should turn out that any threat or inducement has been previously held out by some person in authority, the confession, which is unaccompanied by such caution, will, as before stated, be inadmissible. Still, it is not necessary, in general, to do more than to show that the party receiving the confession left the prisoner at full liberty to act and judge for himself.

Circumstances
necessary to
render pris-
oner's state-
ment valid as
a statutory
confession.

331. According to the principles of the Acts which regulate the examinations of prisoners before the magistrates, it would seem that, in order to render a prisoner's statement strictly valid as a statutory confession, the following circumstances must all have occurred. The charge must have been read to the accused; all the witnesses must have been examined in his presence, and the depositions read to him after the examinations were completed; he must then, and not till then, be twice cautioned by the justice; first, generally, and secondly, as to the inefficacy of any promises or threats which may have been formerly held out to him; his whole statement must then be taken down in his own

words; it must then be read to him, and he must be pressed for his signature, though the act is silent as to the effect of his refusing to sign it, or even to admit its correctness; the justice must also sign the statement; and, this being done, it must be kept with the depositions, and be transmitted, together with them and certain other documents, to the court where the trial is to be had, on or before the opening of such court.

332. A prisoner is not liable to be affected by the *confessions of his accomplices*; and so strictly has this rule been enforced that, where a person was indicted for receiving stolen goods, a confession by the principal that he was guilty of the theft was held by all the judges to be no evidence of that fact as against the receiver.

Prisoner not affected by confessions of accomplices.

Evidence excluded on grounds of public policy.

333. The law *excludes* or dispenses with some kinds of evidence *on grounds of public policy*; because it is thought that greater mischiefs would probably result from requiring or permitting their admission than from wholly rejecting them.

Excluded evidence.

334. The first class of subjects which the law protects from disclosure, includes all *communications between husband and wife*. "No husband," says the Legislature, "shall be compellable to disclose any communication made to him by his wife during the marriage; and no wife shall be compellable to disclose any communication made to her by her husband during the marriage."

Communications between husband and wife.

Professional
communications.

335. *Secondly*, as regards *professional communications*, the rule is now well settled, that, where a *barrister* or *solicitor* is professionally employed by a client, all communications which pass between them in the course and for the purpose of that employment, are so far privileged that the legal adviser, when called as a witness, cannot be permitted to disclose them.

Judges, arbiters,
etc.

336. *Judges, arbitrators* and *counsel* form a *third class* of persons, who, from motives of public policy, are, perhaps, not compellable to testify as to certain matters, in which they have been judicially or professionally engaged; though, like ordinary persons, they may be called upon to speak to any foreign or collateral matters which happened in their presence, while the trial was pending, or after it was ended.

Secrets of
State.

337. A *fourth class* of cases, in which evidence is excluded, comprises *secrets of State*, or matters, the disclosure of which would be prejudicial to the public interest. These matters are such as concern the administration either of penal justice, or of government; but the principle of public safety is in both cases the same, and the rule of exclusion is applied no further than the attainment of that object requires.

Indecent
evidence.

338. The law excludes, on public grounds, a *fifth species* of evidence, namely, that which is *indecent*, or offensive to public morals, or *injurious to the feelings of third persons*; the parties themselves having no interest in the matter, except what they have impertinently created. The mere indecency of dis-

closures does not suffice to exclude them, where the evidence is *necessary* for the purpose of civil or criminal justice; but where the parties have impertinently interested themselves in a question tending to violate the peace of society by exhibiting an innocent third person in a ridiculous light, or to disturb his peace and comfort, or to offend public decency by the disclosures which its decision may require, the evidence will not be received.

Witnesses.

339. By clause 125 Army Act 1881 it is provided that every person attending before a court martial in pursuance of a summons or an order, as a witness, "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 as he would have if he were a witness before a superior court of civil jurisdiction."

Protection of witnesses.

340. Witnesses are *protected from arrest* upon any civil process, while going to the place of trial, while attending there for the purposes of the cause, and while returning home. The service of a subpoena or other process is not necessary in order to afford the witness this protection, provided he has consented to come without such service, and actually does attend in good faith; and therefore the privilege extends to a witness coming from abroad without a subpoena. In determining what constitutes a reasonable time for going, staying, and returning, the courts are disposed to be liberal; and, provided that it substantially appears that there

Witnesses protected against civil process.

has been no improper loitering or deviation from the way, they will not strictly inquire whether the witness or other privileged party went as quickly as possible and by the nearest route.

But not
against crim-
inal process.

341. It would seem that, in general, this protection extends only to persons arrested on *civil process*, for against criminal process home itself is no protection.

Competency of Witnesses.

Certain per-
sons rendered
incompetent.

342. Although, in the ordinary affairs of life, temptations to practice deceit may be comparatively few, and therefore men may in general be disposed to rely upon the statements of each other ; yet, in judicial investigations, the motives to pervert the truth are so greatly multiplied that, if statements were believed in courts of justice with the same indiscriminating credulity as in private life, much wrong would unquestionably be done. The danger of injustice arising from this cause, which doubtless should induce judges to watch with cautious suspicion the evidence laid before them especially when it comes from an interested or polluted source, has, till recently, been thought to justify the observance of rules, by virtue of which large and numerous classes of persons were rendered incompetent witnesses, and their testimony uniformly excluded.

Defendants in
criminal
courts.

343. The *first class* of persons whom the law in general regards as partially incompetent to testify, includes defendants in our criminal courts, and parties charged before magistrates with minor offences.

Husbands and
wives.

344. The *second general rule of exclusion*—subject to some few exceptions—precludes husbands and

wives from giving testimony for or against each other in any criminal proceeding. The exceptions are in cases where a crime has been committed by the one against the other. Thus a wife may testify against her husband for an assault and battery upon her ; or, for maliciously shooting, or attempting to poison her ; or, it seems, for any other offence against her liberty or person.

345. The *third class* of persons incompetent to testify includes witnesses, who, being called for the Crown in cases of *high treason* or misprision of treason, have not been included or properly described in a *list* duly delivered to the defendant.

Witnesses in high treason not on the list.

346. The *last class* of persons rejected by the law as witnesses includes all those who are incapable of comprehending the nature of an oath or affirmation, or of giving a moderately rational answer to a sensible question. It makes no difference from what cause this incapacity may arise ; for, whether it be occasioned by a congenital want of intellect, or by some temporary obscuration of the reasoning faculties, or by mere unripeness of understanding,—whether the person be an idiot, or lunatic, a drunkard, or a child,—he cannot, so long as the defect exists, be examined as a witness. The incapacity, however, is co-extensive with the defect. Thus a monomaniac, or a person who is afflicted with partial insanity, will be an admissible witness, if the judge finds upon investigation that he is aware of the nature of an oath or declaration, and that he is capable of understanding the subject, with respect to which he is required to testify. So, in the case of total madness,

Idiots, lunatics, drunkards, children.

the occurrence of a lucid interval,—in the case of intoxication, the return of sobriety,—will render the witness competent ; and the judges will occasionally postpone trials of importance if they have good cause to believe that the witness within a reasonable time will be able to testify, and if, without his testimony, the ends of justice will probably be defeated.

Witnesses, how
to be sworn.

347. All witnesses ought to be sworn according to the peculiar ceremonies of their own religion, or in *such manner* as they *deem binding* on their consciences.

How Evidence is to be given.

348. The examination of a witness by the person who calls him is called his examination, or direct examination, or examination-in-chief, and on this examination the questions must be relevant to the issue, that is to say, must relate to the matters in issue at the trial. The court must, of course, in all cases, see that a witness is not compelled to answer any question in respect of which he is entitled to claim privilege ; and must also see that, as far as possible, a witness is so dealt with that his honest belief is obtained from him.

Leading
questions.

349. Accordingly, a witness must not be asked in examination-in-chief leading questions on any material point, that is to say, questions suggesting the answers which the person putting the question wishes or expects to receive, or suggesting disputed facts, as to which the witness is to testify. For instance, a witness must not be asked, " Did the prisoner

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then go into the barrack-room?" but "what did the prisoner do next?" If it were not for this rule a favorable and dishonest witness might be made to give any evidence that was desired. On the other hand, it would be mere waste of time to enforce the rule where the questions asked are simply introductory, and form no part of the real substance of the inquiry or where they relate to matters which, though material, are not disputed.

350. Of course, if a person calls a witness and the witness appears directly hostile to him, or interested on the other side, or unwilling to give evidence, the reason of the rule fails, and the court should allow the person calling the witness not only to ask him leading questions, but to cross-examine him, and to treat him in every respect as though he were a witness called by the other side, except that as he has been put forward as worthy of credit by the person calling him, that person must not be permitted, either by cross-examination or by direct evidence, to impeach his credit by general evidence of bad character.

Exception in case of hostile witness.

351. When the examination-in-chief is finished the opposite party cross examines the witness. In cross-examination leading questions and irrelevant questions may be put, and must be answered, as the cross-examining party is entitled to test the examination-in-chief by every means in his power; and irrelevant questions are often put in cross-examination for the sole purpose of putting a witness, who is supposed to have learnt up the story, off his guard,

Rules as to cross examination.

Questions also may be put on cross-examination which tend either to test the accuracy or credibility of the witness or to shake his credit, impeaching his motives or injuring his character ; though such questions cannot be put on the examination-in-chief or re-examination.

Rule as to re-examination.

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

Discretion of court as to enforcing rules.

353. Speaking generally, the above rules should only be enforced in their full strictness in the case of counsel or skilled advocates or other persons who may be supposed to be thoroughly acquainted with the rules of evidence, and therefore may be presumed only to break the rules of evidence for the sake of obtaining an improper advantage. In other cases the court may allow considerable latitude, and should interfere only where the interests of justice plainly require it.

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*Form of Application for a General or District
Court Martial.*

Station, _____ Date, _____ 188

Application for a _____ Court Martial.

SIR,—I have the honor to submit _____ charge
against No. _____ of the _____ under my
command, and request you will obtain the sanction
of _____ that a _____ Court Martial
may be assembled for his trial at _____

The prisoner is now at _____

His general character is *

I beg to enclose the following documents :—

1. † _____ Charge Sheet (in duplicate).
2. § Summary of Evidence.
3. ‡ The prisoner's troop [battery or company]
defaulter sheet.

4. ‡ List of witnesses for the prosecution and
defence (with their present stations).

5. ‡ Statement as to character, and particulars
of service of prisoner to be proved by _____

I have the honor to be, Sir,

Your most obedient humble servant,

To _____

Signature of Commanding Officer.

* To be filled in by the Commanding Officer.

† One copy to be sent to the president; one copy to be filed
with the application for trial. In cases of desertion, a statement
as to whether the prisoner was apprehended or surrendered, is to
be included.

‡ To be sent to the president.

‡ (4) (5) To be returned to the corps with the notice of trial.

Surgeon's Certificate.

I certify that No. of is in a
state of health, and to undergo imprison-
ment, and with or without hard labor; and that
his present appearance and previous medical history
both justify the belief that hard labor employment
will neither be likely to originate nor to re-produce
disease of any description.

Signature of the Surgeon.

*Form of Order for the Assembly of a
Court Martial.*

Orders by _____ commanding.

The detail of officers as mentioned below will
assemble at _____ on _____ for the
purpose of trying by _____ Court Martial the
prisoner named in the margin.

PRESIDENT.

_____ is appointed president.

MEMBERS.

Prisoner will be warned and all witnesses duly
required to attend.

The proceedings will be forwarded to

Signed this _____ day of _____ 188

Signature.

Form of Summons to a Civil Witness.

To

Whereas a Court Martial has been ordered to assemble at on the day of 188 for the trial of of the

I do hereby summon and require you to attend, as a witness, the sitting of the said Court at on the day of at o'clock in the forenoon [and to bring with you the documents hereinafter mentioned, namely] and so to attend from day to day until you shall be duly discharged ; whereof you shall fail at your peril.

Given under my hand at on the day of 188

Signature.

*Convening Officer or Judge Advocate,
or President of the Court
or Commanding Officer of the Prisoner.*

Memo. for Guidance at Courts Martial.

(Issued by Department of Militia and Defence.)

Order for convening Court Martial should be attached before Sheet (A) of the printed proceedings, marked X, and signed by the President.

Charge Sheet should be attached after Sheet (B) and before sheet (C) of the printed proceedings, marked Y, and signed by the President.

Composition of Charge should be as follows ;—

Charge Sheet.

The Prisoner, No. Private
a soldier of is charged with :

First.—Using threatening language to his superior officer in that
at Barracks, on the
of 188 , he, &c., &c.

Second.—Resisting an escort whose duty it was to have him in charge in that
at the place and on the day mentioned in the first charge, etc., etc.

In cases of desertion, a statement as to whether the prisoner was apprehended or surrendered is to be included.

Statement as to character and service should be attached next before Sheet (G), marked Z, and signed by the President.

Other documents connected with trial should be attached to proceedings at the end, and marked with letters not already used, as L, M, N, O, etc.

Extra Sheets.

When necessary to use foolscap, owing to there not being sufficient room on the printed sheets, they should be lettered to correspond with the sheets of

which they form part; for instance, if necessary, after the printed sheets marked D, E, etc., they should be marked D 3, E 3, etc., etc., in order.

Numbering of Sheets.

The sheets to be numbered consecutively, beginning with "Order Convening the Court" as, 1, for convenience in putting the sheets together. All the proceedings should be attached together by a clip or tape.

Evidence.

All evidence, after being written down, should be read over in the hearing of the Court before the witness is allowed to withdraw, and recorded in the proceedings.

Remarks of Convening Officer.

A space of at least half a page is to be left for the remarks of the convening officer.

Sentence.

The sentence is to be marginally noted in every case.

Sentence how expressed.

I. Terms of imprisonment not amounting to six (6) months, will be awarded in days.

II. Terms of imprisonment of one (1) year and two (2) years, in years.

III. Other terms of imprisonment will be awarded in months, or, if required, in months and days. Months must be stated to be calendar months; a year is twelve (12) calendar months.

By Order,

WALKER POWELL, *Colonel,*
Adjutant General Militia.

Head Quarters,
Ottawa, 17th November, 1884,

A

Form of Proceedings for Court Martial.

(To be written on both sides of the paper).

Proceedings of a Court Martial, held
 at _____ on the _____ day of _____
 188 by order of _____ Commanding
 dated the _____ day of _____ 188

*President.**Members.**Judge Advocate,*
(if any).

At _____ o'clock the Court opens.

Trial of _____

B

(1) and (2).

(1). The order convening the Court is read, and is marked _____, signed by the President, and attached to the Proceedings.

The Charge Sheet and the Summary (or abstract) of Evidence is laid before the Court.

The Court satisfy themselves as provided by Rules of Procedure, 22 and 23.

(2.) _____ appears as Prosecutor, and takes his place.

The above-named Prisoner is brought before the Court.

The names of the President and Members of the Court are read over in hearing of the Prisoner, and they severally answer to their names.

Question by
the President
to the Prisoner

Do you object to be tried by me as the President, or by any of the Officers whose names you have heard read over?

Answer by
Prisoner.

(INSTRUCTION.—*The questions are to be numbered throughout consecutively in a single series. The letters Q. and A. in the margin may stand for Question and Answer respectively.*)

The President, Members and Judge Advocate (if any) are duly sworn.

The following Officers under instruction, viz. :

_____ are duly sworn.

C

(3.)

Charge Sheet.

(3.) The Charge Sheet is signed by the President, Charge Sheet. marked and annexed to the Proceedings.

The Prisoner is arraigned upon each charge in the above-mentioned Charge Sheet.

Are you guilty or not guilty of the (first) charge against you, which you have heard read ?

Question to the Prisoner.

Answer.

Are you guilty or not guilty of the second charge against you, which you have heard read ?

Question.

Answer.

Are you guilty or not guilty of the third charge against you, which you have heard read ?

Question.

Answer.

D

(4.)

Proceedings on Plea of Guilty.Question to
the Prisoner.

(4.) Do you wish to make any statement in
reference to the charge to which you
have pleaded Guilty?

The Prisoner in reference to the charge
says:

Answer.

*(INSTRUCTION.—The substance of the Prisoner's state-
ment must be taken down in the first person, and as
nearly as possible in his own words.)*

The Court find, in pursuance of the above plea,
that the Prisoner. (Number, rank, name,
regiment) is guilty of the charge (all the charges)
or

is guilty of the charge, and is not
guilty of the charge.

The Summary (or abstract) of Evidence is read,
marked , signed by the President and attached
to the Proceedings.

If there is no Summary or abstract of Evidence
the Prosecutor proceeds to call Witnesses.

First Witness
for Prosecu-
tion.

being duly sworn, is examined by the Prosecutor,

F

(4.)

Proceedings on Plea of Guilty.

Do you wish to call any Witnesses as to character? Question to the Prisoner.

Answer

Do you wish to make any statement in mitigation of punishment? Question to the Prisoner.

The Prisoner in mitigation of punishment says

Answer.

or, if the statement is in writing, hands in a written statement, which is read, marked signed by the President, and attached to the proceedings.

(INSTRUCTION.—*If the Prisoner's statement is not in writing, and is delivered by himself, the material portions should be taken down in the first person, and, as nearly as possible, in his own words. If delivered by any one else, the material portions should be recorded. Care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.*)

D

(5.)

Proceedings on Plea of Not Guilty.

(5.) The Prosecutor makes the following address

or, if the address is written, hands in a written address, which is read, marked _____, signed by the President, and attached to the proceedings.

The Prosecutor proceeds to call Witnesses

being duly sworn, is examined by the Prosecutor.

First Witness
for Prosecu-
tion.

Cross-examined by the Prisoner.

Re-examined by the Prosecutor.

Examined by the Court.

His evidence is read to the witness as directed by Rule of Procedure, 81(B)

The witness withdraws,

E

(5 and 6.)

Proceedings on Plea of Not Guilty.

The Prosecution is closed.

Defence.

Do you intend to call any witness in your defence ? **Question to the Prisoner.**

Answer.

Is he a witness as to character only ?

Question.

Answer.

(6.) * [The Prosecutor addresses the Court upon the evidence for the prosecution as follows :

or, if the address is written, hands in a written address, which is read, marked ; signed by the President, and attached to the proceedings.]

* If witnesses are to be called, excepting as to character, this clause is to be struck out.

E 2

(6 and 7.)

Proceedings on Plea of Not Guilty.
— — —Question to
the Prisoner.(6 & 7.) Have you anything to say in your
defence?

The Prisoner in his defence says:—

Answer.

or, if his address is in writing, hands in a written
address, which is read, marked _____, signed
by the President, and attached to the proceedings.

The Prisoner calls the following witnesses *[as
to character.]

First witness
for defence
*[as to char-
acter.]

being duly sworn, is examined by the Prisoner.

— — —
*If witnesses are called, excepting as to character, this
clause is to be struck out.

F

(8) and (9.)

Proceedings on Plea of Not Guilty.

Finding.

(8.) The Court is closed to consider their Finding.

(8 and 9.) The Court find that the Prisoner Finding.

Proceedings on Acquittal of all the Charges.

The Court find that the Prisoner (No. , Rank, Name, Regiment) is not guilty of the charge (or all the charges); or is not guilty of the charge (or all the charges), and honourably acquit him of the same.

The Findings are read in open Court, and the Prisoner is released.

Signed at , this day of 188

President.

Judge Advocate
(if any)

G

(10.)

Proceedings on Conviction before Sentence.

(10.) The Court being re-opened, the Prisoner is again brought before it

Evidence of character, &c.

is duly sworn.

Question by the president.

Have you any evidence to produce as to the character and particulars of service of the Prisoner ?

Answer by the witness.

I produce this statement (the witness hands in the statement, which should be in the form given at the end of these proceedings.)

The above statement (with the schedule of convictions) is read, is marked , signed by the President and annexed to the proceedings.

Question by the president

Is the Prisoner the person named in the statement which you have heard read ?

Answer by the witness.

Question.

Have you compared the contents of the above statement with the Regimental Books ?

Answer.

Question.

Are they true extracts from the Regimental Books, and is the statement of entries in the Defaulter Book a fair and true summary of those entries ?

Answer.

H

(10.)

The Court is closed to consider their sentence.

Sentence.

The Court sentence the Prisoner.

Sentence.

Signed at
day of

this
188

President.

Judge Advocate
(if any)

J

(11.)

Revision.

(11.) At _____ on the _____ day of _____ 188
at _____ o'clock, the Court reassembled by order of _____
for the purpose of reconsidering their

Present the same Members as on the

The _____ directing the reassembly of
the Court for the revision and giving the reasons of
the confirming authority for requiring a revision of
the _____ is read, marked _____, signed
by the President, and attached to the Proceedings.

The Court having attentively considered the
observations of the _____ Revising Officer, and
the whole of the Proceedings, do now

- a. revoke their finding and sentence, and are
of opinion, &c., or
- b. do now revoke their sentence, and now sen-
tence the Prisoner, &c., or
- c. do now respectfully adhere to their sen-
tence (or finding and sentence.)

Signed at _____ this _____ day of _____ 188

President.

Judge Advocate
(if any)

*Statement as to Character and Particulars
of Service of Prisoner.*

of the

1. The following is a fair and true summary of entries of the Prisoner's name in the Defaulter's Book, exclusive of convictions by a Court Martial or a Civil Court :

	<i>Within last 12 months.</i>	<i>Since Enlistment</i>
For	times	times.
For	times	times.
For	times	times.
For	times	times.

NOTE.—If the charge is for drunkenness the entries for drunkenness must be stated separately.

Or, the Prisoner's name does not appear in the Defaulter's Book.

2. The Prisoner has not been previously convicted;

or,

The previous convictions of the Prisoner by a Court Martial or a Civil Court are set out in the Schedule annexed to this statement.

3. The Prisoner is not under sentence at the present time;

or,

the Prisoner at the present time is under sentence for beginning on the day of

4. The Prisoner has been in confinement, awaiting trial on the present charges for beginning on the day of

5. The Prisoner's age is stated in his attestation paper to be

6. The date of his attestation specified in his attestation paper is

7. The service which the Prisoner is allowed to reckon towards discharge is

8. The Prisoner is entitled to deferred pay in respect of . years' service.

9. The Prisoner is in possession of, or entitled to, no military decoration or military reward which the Court can forfeit [*or is in possession of or entitled to.*]

10.

11.

[NOTE—*If any matter in any of the above paragraphs cannot be stated from the Regimental Book, the paragraph must be struck through.*]

The above statement [with the Schedule of Conditions] is read, is marked , signed by the President, and annexed to the Proceedings.

Schedule of Convictions by a Court Martial or Civil Court of Prisoner.

Rank, Name and Regimental Number *of the*

NOTE.—A verbatim extract from the regimental books, stating these convictions, must be inserted.

DESCRIPTION OF COURT BY WHICH TRIED.	DATE & PLACE OF TRIAL.	CHARGES UPON WHICH CONVICTED.	SENTENCE OF THE COURT	PUNISHMENT REMITTED.

I hereby certify that the foregoing Schedule of Convictions is a true extract from the Regimental Books in my custody.

Signed this *day of*

Authenticated Description of the Prisoner.

Name and Regimental No.			
Date of Enlistment			
Trade on Enlistment			
Religious Persuasion		Country	
Age	Years	Months.	
Married or Single			
Service	years	months.	Including periods forfeited by absence or otherwise.
Height	feet	inches.	
Complexion	Marks		
Hair	Can read		
Eyes	Can write		
Subsisted to	by		

If the Prisoner is to be discharged }
 from the Service at the expiration of }
 his imprisonment, it should be here }
 stated.

List of necessaries required
 to be in possession of the
 Prisoner on admission.

Numbers received
 with the Prisoner
 when admitted.

- 1 shirt,
- 1 pair of socks,
- 1 pair of boots,
- 1 uniform cap,
- 1 do coat or jacket,
- 1 uniform pair of trousers,
- 1 pair of braces.

Signed

Commanding

*Form of Order for Commitment to Provost
Prison.*

To the Non-Commissioned Officer in charge of
Provost Prison at

Whereas, _____ of the
was on the _____ day of _____ 188 _____ ,
awarded by his Commanding Officer, "Imprisonment
with hard labor" for
for the offence of _____

Now, therefore, I, the undersigned, being the
Commanding Officer of the said Military Prisoner,
do hereby, in pursuance of the Army Act, 1881,
and of all other Acts and Powers enabling me in
this behalf, order you to receive him into your
custody to undergo his sentence according to law,
and for so doing this shall be your warrant.

Signed at _____, this _____ day of _____
188 _____

Form of Order for Discharge of Prisoner.

To the Governor, or Warden or Gaoler in charge
of Gaol or Prison at

Whereas (Name, No., Rank), of the
Regiment, is now in your custody under a sentence of
imprisonment by Court Martial (or pursuant to the
award of his Commanding Officer)

I, _____ the undersigned, being
the Officer Commanding the Militia or "the Officer
Commanding the Military District in which the
Prisoner is," or, if the Prisoner is imprisoned under
the award of his Commanding Officer, "being the
Commanding Officer of the said Prisoner," do hereby
order you to discharge the said Prisoner.

Signed at _____ this _____ day of
188

E. F.

*Form of Order for temporary detention in
Prison or Lock-up.*

To the Governor, Warden or Gaoler in charge of
Gaol or Prison at _____ or Officer in
charge of the Police Station (or other place) at

Whereas (Name, No., Rank,) of the
Regiment is now a Prisoner in Military custody,

Now, therefore, I, the undersigned, the Com-
manding Officer of the said Prisoner, do hereby re-
quire and order you to receive the said Prisoner
into your custody, and detain him until you receive
a further order from me, but not longer than
seven days, and for so doing this shall be your
warrant.

Signed, this _____ day of _____ 188

J. K.

Form of Oath for Members of Court Martial.

You, (name) do swear, that you will well and truly try the Prisoner (or Prisoners) before the Court, according to the evidence, and that you will duly administer justice according to the Army Act now in force, without partiality, favour, or affection, and you do further swear that you will not divulge the sentence of the Court until it is duly confirmed, and you do further swear that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this Court Martial, unless thereunto required in due course of law. So help you GOD.

Form of Oath for Judge Advocate.

You, (name) do swear that you will not, unless it is necessary for the due discharge of your official duties, divulge the sentence of this Court Martial until it is duly confirmed; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this Court Martial, unless thereunto required in due course of law. So help you GOD.

*Form of Oath for Officers attending for the
purpose of instruction.*

You, (name) do swear that you will not divulge the sentence of this Court Martial until it is duly confirmed ; and that you will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this Court Martial, unless thereunto required in due course of law. So help you GOD.

Form of Oath for Shorthand Writer.

You, (name) do swear that you will truly take down to the best of your power the evidence to be given before this Court Martial and such other matters as you may be required, and will, when required, deliver to the Court a true transcript of the same. So help you GOD.

Form of Oath for an Interpreter.

You, (name) do swear that you will to the best of your ability truly interpret and translate, as you shall be required to do, touching the matter before this Court Martial. So help you GOD.

Form of Oath for Witness.

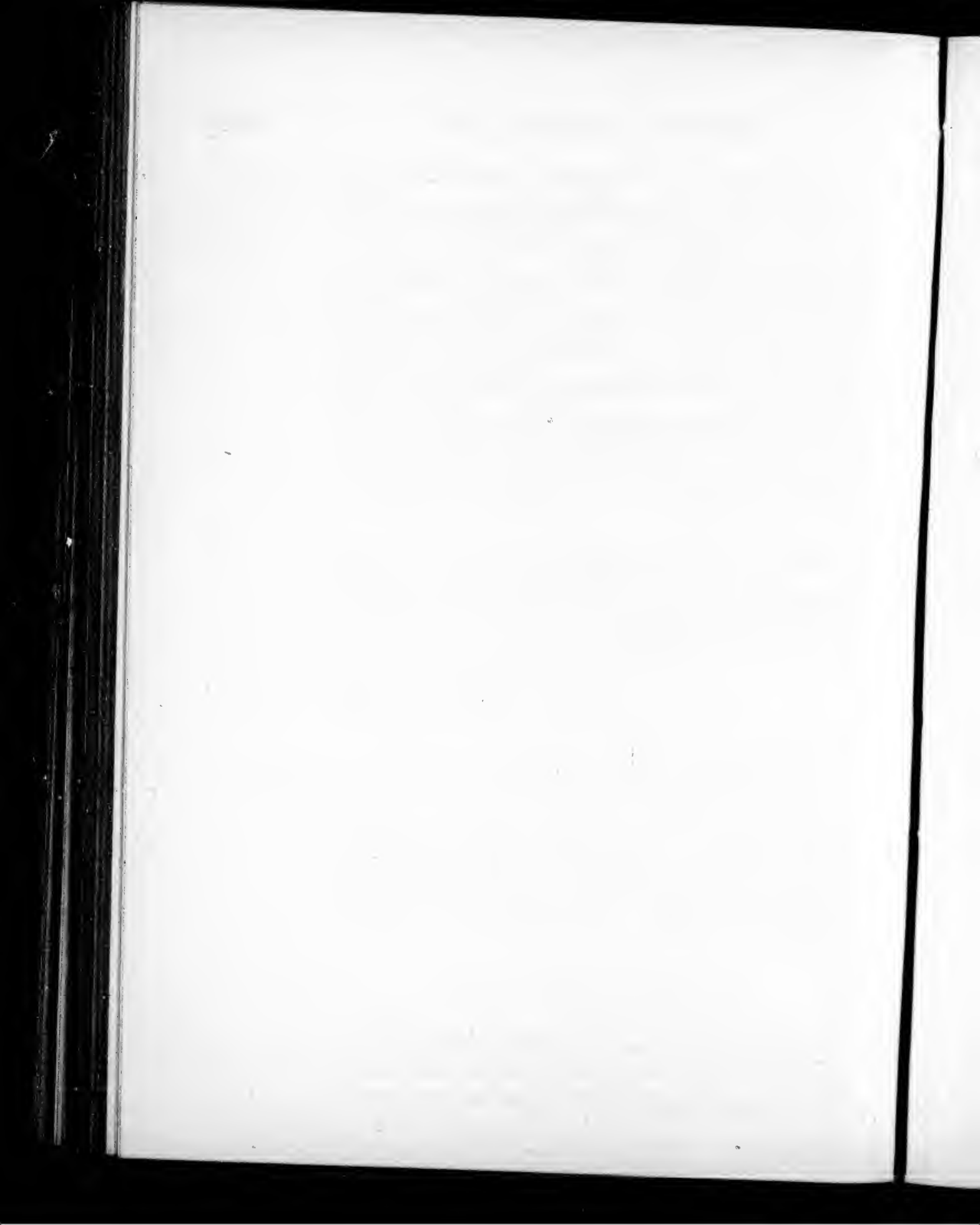
The evidence which you shall give before this Court, shall be the truth, the whole truth, and nothing but the truth. So help you GOD.

If any member of, or person in attendance on, or witness before a Court Martial, 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, and such solemn declaration shall be deemed to be an oath. A. A. 52. (4)

When a person is permitted to make a solemn declaration, instead of being sworn, the form of declaration is as follows:

I, (name) do solemnly promise and declare that I will, &c. &c. *Here follow form of oath:*

An oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience, and the words "You do swear", and "So help me GOD," may be omitted or varied for the purpose. R. O. P. 30



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NORTH WEST MOUNTED POLICE.

OTTAWA, 16th April, 1885.

Memorandum for the information of Applicants for Engagement in the North-West Mounted Police Force.

1. No expenses, travelling or otherwise, of applicants are paid from public funds until their engagement papers are completed.
2. Applicants must be between the ages of Twenty-two and Forty, active able-bodied men of thoroughly sound constitution, and must produce *certificates of exemplary character*.
3. They must be able to read and write either the English or French language; must understand the care and management of horses, and be able to ride well.
4. The term of engagement is five years.

5. The rates of pay are as follows:—

Staff Sergeants.....\$1.00 to \$1.50 per day.
 Other Non-Com'd. Officers..... 85c. to \$1.00 “

Constables.		Service Pay.	Good Conduct Pay.	Total.
1st year's service	.....	50c.	—	50c. per day.
2nd “	.....	50	5c	55 “
3rd “	.....	50	10	60 “
4th “	.....	50	15	65 “
5th “	.....	50	20	70 “

Extra pay is allowed to a limited number of blacksmiths, carpenters and other artizans.

6. The duties of the Force are often associated with danger and fatigue, which tax severely the physical powers in a region where luxuries, or even the necessary comforts of life, must be dispensed with.

7. Members of the Force are supplied with free rations, a free kit on joining, and periodical issues during the term of service.

8. Married men will not be engaged.

9. The minimum height is 5 feet 6 inches, the minimum chest measurement 35 inches, and the maximum weight 175 pounds.

ADVERTISEMENTS.

REGULATIONS
FOR THE
SCHOOLS OF MILITARY INSTRUCTION
FOR THE
ACTIVE MILITIA
OF THE
DOMINION OF CANADA,
1885.

521. Schools of Military Instruction are established in connection with corps enlisted for continuous service, for the purpose of affording officers, non-commissioned officers and men of the Active Militia, opportunities of joining for courses of study and training, and to enable them to obtain certificates of qualification. The Troop of Cavalry, Batteries of Artillery and Companies of Infantry embodied for continuous service will each form a School of Military Instruction.

Schools.

522. The instructional year for these Schools is divided into three "Short Courses" of three months each, commencing on 1st January, April and September.

Officers desiring to join for a special course may be permitted to do so at any time when there are vacancies.

523. The School for Cavalry is at Quebec.

The Schools for Artillery are at Kingston, Ont., and Quebec.

The Schools for Infantry are at Toronto, Ont., St. Johns, Que., Fredericton, N.B., and Winnipeg, Man.

524. Unless otherwise directed, individuals desiring instruction will be required to join the School for the branch of the service to which they belong nearest to the Head Quarters of their corps.

525. Officers, non-commissioned officers and men of the Engineers will, for the present, be attached to the School of Artillery at Kingston, and be included with those receiving instruction at the Royal Military College.

(2) The attached officers will rank among themselves according to their Militia rank and the dates of their commissions; but on all duties connected with the Schools they will, whatever rank they may hold, be considered as junior to the permanent officers of the corps composing the Schools.

Courses of Instruction.

531. Ten officers and twenty non-commissioned officers or men (previously recommended) are authorized to join each Cavalry, Artillery and Infantry School for a "Short Course" of instruction, to last three months; on the termination of which the Commandant of the School may select from these officers and non-commissioned officers one or more of the most efficient, and recommend their being retained for a "Long Course," but in no case is the establishment to be exceeded.

(5) Each person attached for instruction will receive a free issue of one copy each of the Regulations for the School, and of the Standing Orders of the corps forming the School to which he is attached. All other books, and the paper and stationery required for instructional purposes, must be procured at the expense of the person requiring such for his use. The books of authorized editions and the paper of uniform description to be as directed by the Commandant of the School.

Messing.

532. The officers and non-commissioned officers attached for instruction, those referred to in 531 (2) excepted, will be members of the established regimental messes.

(2) Each officer who becomes a member of the established Regimental Mess of the School to which he is attached for a course of instruction will be required to contribute a sum not exceeding \$4 monthly, in advance, to cover entrance fee, subscriptions, band and newspapers, \$2.50 monthly in the Schools of Cavalry and Artillery, and \$1.50 monthly in the Schools of Infantry, for servant—and in addition the current charge for messing, which at present varies from 50 to 66 $\frac{2}{3}$ cents per diem, according to locality and the arrangements made by mess committees.

Officers Joining.

533. Officers who desire to join for a course of instruction are required to forward their applications through the ordinary channel of communication to the Deputy Adjutant-General of the district in which they reside, who will refer it to the Commandant of the School for report as to when there will be a vacancy, and for transmission to the Adjutant-General. If their admission is authorized, their names will be communicated to the Commandant of the School and to the Deputy Adjutant-General of the Military District. The Commandant will notify the applicants of such approval, and of the date they are to join for the required course of instruction. No officer is to proceed to join a School of Military Instruction until he has received such notification.

(2) If any individual applies to join a School of an arm of the service other than his own, or to join a School of his arm other than the one nearest to the Head Quarters of his corps, such application, with explanations relating thereto, are to be forwarded by the Deputy Adjutant-General of the District direct to the Adjutant-General.

N.-C. Officers and men joining.

534. Officers commanding corps of active militia will make application to the Commandant at least a fortnight before the commencement of each short course, stating the number of N.-C. officers and men of their corps wishing to join. Upon receiving a notification from the Commandant of the number of vacancies which can be allotted to their corps, the officer commanding the corps will apply to the Commandant of the School for transport for the required number. Those authorized will join on the 1st or 2nd of the month specified, so as begin the course at its commencement.

535. Officers commanding corps are requested to exercise care and judgment in the selection and recommendation of the non-commissioned officers and men they are desirous of sending for a course of instruction; they should in all cases be able to read and write fairly. Persons who cannot do so, do not possess the requisite qualification for non-commissioned officers, and should not therefore be sent for instruction.

(3) If any N. C. officer or man who is physically unfit for service, or who cannot read and write fairly, is sent to a School at the public expense, he will not be admitted for instruction, but shall be returned to his corps, and the commanding officer thereof will be required to make good the expenses incurred.

536. Commanding officers are *not to appoint* members of their corps, about to join a School, *non-commissioned officers* merely to give them rank. They should see that all persons sent to the School are provided with proper uniform.

Certificates of Captains and Surgeons.

537. Each non-commissioned officer or man proceeding to join a School must be provided with a certificate (on printed form) from the Captain of his corps, of residence and of his having taken the oath of allegiance to the Sovereign. Also, on same form, a Surgeon's certificate of required standard, state of health and fitness for service. These certificates are to be produced on joining a School to the officer in command.

540. The printed form of certificate (No. 350) will be supplied by Deputy Adjutants-General of Military Districts and by Commandants of Schools.

Transport expenses.

541. Officers authorized to join a School will be entitled to requisitions for First Class Fares. The requisitions, when for transport by railway, must be exchanged for a ticket at the Railway Station, *prior* to entering the car.

(2) It is to be understood that officers authorized to join a School for a few days, for the purpose of passing the examination only, required for "Special" Course, will not be entitled to Transport Expenses unless successful in passing the examination.

542. Non-commissioned officers and men proceeding from their Troop, Battery or Company Head Quarters to join or returning thereto after completing their course of instruction in the School, will be entitled to "Transport Requisitions" for Second Class fares by Railroad or Steamboat.

543. When proceeding to or returning from the School, the requisitions will be issued by the Commandant of the School. Officers issuing a requisition to non-commissioned officers and men, are to state on the face thereof that the passages required are for "Second Class," and that it must be exchanged for a regular ticket at the Railway Station prior to entering the cars.

Pay, rations and allowances.

545. Commissioned officers attached for a 3 months (Short Course) instruction..... \$1.00 per diem

Non-commissioned officers and men attached for a 3 months (Short Course) instruction..... 0.50 per diem.

Trumpeters or Buglers under 18 years of age, attached for a (Short) Course of instruction, 30 cents per diem.

546. Officers and non-commissioned officers attached for a "Long Course" will be paid at the same rates as those attached for a "Short Course." In either case, pay is only to be drawn for the days the person is actually present at the School.

(2) Each special course officer who obtains a certificate of qualification after 7 days' residence at a School, will receive pay at the rate of one dollar per diem for the days actually present thereat.

547. Rations, barrack accommodation, and allowances of fuel and light will be in the same proportions as detailed for officers, N. C. officers and men belonging to the Permanent Corps.

Uniform.

548. The officers of the Schools of Military Instruction and those attached for instruction, are at all times to appear in uniform in barracks or camp, or in the streets of the city or town near which they are quartered. The exception being when plain clothes are worn for boating, athletic exercises, walks, rides or drives in the country, or evening entertainments of a private or unofficial character.

549. Officers joining for a short course will be required to provide themselves with the following articles of uniform, viz: Tunic, patrol jacket, undress trousers, undress belts, sword and knot, forage cap and gloves. Pantaloon and high boots, with spurs for mounted duties. Additional for winter months: great coat, fur cap and gloves, winter boots.

(2.) Officers must, when proceeding to the School, be provided with these articles of uniform clothing.

(3.) Commandants will see that this regulation is strictly carried out in their several Schools.

(4.) Officers who join for seven days only, for the purpose of obtaining a Special Course certificate, may, if unprovided with a full dress tunic, be permitted to wear undress uniform during the period of such attendance.

550. The use of mess jacket, and waiscoat, and full dress trousers for wearing at mess, is left optional for officers attending for a Short Course.

551. Non-commissioned officers and men joining for a Short Course must take with them the tunic, trousers and forage cap issued to them in the corps to which they belong. Upon joining the School they will only be provided free of charge with a serge jacket and a pair of serge trousers. Great coats will be issued at the school for wear during course of instruction, also fur caps during winter course.

Certificates.

552. The standard of military education and competency for which certificates are granted will be the same in all Schools of the same arm of the service.

553. The certificates to be issued will be "Long," "Short" and "Special" Course. The "Long" and "Short" Course will be each of two "Grades:" "A" for officers, and "B" for non-commissioned officers and men; and each grade will be of two "Classes:" 1st and 2nd. The "Special" Course will be restricted to officers, and will be divided into two "Classes:" 1st and 2nd.

(2.) To obtain a "Long Course" certificate of either grade, the candidate will be required to be in possession of a Short Course certificate obtained after three months' attendance at a permanent Military School, and to pass such a further examination as may be considered necessary, in subjects detailed in paragraph 556.

(3.) To obtain a "Short Course" certificate of either grade, the candidate will be required to pass the necessary examination after attendance of not less than three months at a permanent School of Military Instruction, or by passing the prescribed examination only, after having served in actual command of his corps for not less than five years.

(4.) 1st Class Grade "A" Short Course certificates must be held by all Field officers and adjutants in the Cavalry, Artillery, Engineers, and by Adjutants of Infantry who do not now hold 1st Class certificates; and 2nd Class, Short Course, Grade "A" or Special Course certificates, by all officers permanently appointed, with the exception that the possession of a 1st Class "Short Course" grade "B" certificate will qualify the holder for the rank of Lieutenant.

555. "Long Course" certificates, except under very exceptional circumstances, will be required to be held by all officers, and by non-commissioned officers of Artillery and Engineers, recommended for Staff employment, and must be obtained by all subaltern officers appointed to permanent corps before such appointments are confirmed.

561. "Special Course" certificates will be obtainable by officers only after passing the required examination for Short Course Certificate after not less than seven days' residence at one of the Permanent Schools of Military Instruction. Until further orders, these certificates will be considered as sufficient qualification for Field rank in the Infantry, and for the rank of Captain in the other branches of the Service.

Recruits.

Information for those who desire to Enlist for THREE years in Permanent Corps.

Enlistment.

Applicants for enlistment must be *bona fide* British subjects of good character, unmarried, between the ages of 18 and 45, in good health, not less than 5 feet 6 inches in height for Artillery,—5 feet 5 inches for other arms—and 34 inches round the chest.

They will be required to enlist for three years, and pass a medical examination before attestation.

Pay.

Staff Sergeants.....	\$1.00	per day
Sergeants	0.80	"
Corporals.....	0.70	"
Bombardiers.....	0.50	"
Buglers (under 18 years of age, 30c.).....	0.40	"
Gunners	0.40	"

In addition Free Rations.

1 lb. bread, 1 lb. meat, 1 lb. potatoes, 2 ozs. cheese, 1 oz. pot barley, $\frac{1}{2}$ oz. coffee, $\frac{1}{2}$ oz. tea, 2 ozs. sugar, $\frac{1}{2}$ oz. salt $\frac{1}{30}$ oz. pepper; also fuel, light, barrack accommodation and medical attendance.

Good conduct pay for Troopers, Bombardiers and Gunners, Lance Corporals and Privates, at rate of 2 cents per day for first year's service, 3 cents per day for second, and 4 cents per day for third, to be paid at termination of engagement; and on re-engagement for three years, 5, 6 and 7 cents per days for each successive year.

Free Kit on joining.

1 Cloth Tunic.	1 Winter Cap.	2 Pair Boots.
1 Serge "	1 Pair Cloth Trousers.	1 " Mitts.
1 Forage Cap.	1 " Serge "	1 Muffler.

And thereafter a similar issue annually, winter cap, mitts and muffler *excepted*, with badges, etc., according to rank.

An annual allowance, after first year's service, of \$3 will be granted to each soldier to enable him to keep up his winter kit, including boots.

Also issue of regimental necessaries free on joining.

To be kept in servicable order at the soldier's expense during his whole period of service, viz :

2 Grey Shirts.	1 Pair Shoe Brushes.	1 Razor and Case.	2 Pair Socks.
1 Cotton Shirt.	1 Shaving Brush.	1 Comb.	2 Pair Drawers.
2 Knitted Shirts.	1 Hold-all.	2 Towels.	1 Pair Braces.
1 Cloth Brush.	1 Fork and Knife.	1 Button Stick.	1 Box Blacking.
1 Button Brush	1 Spoon.	1 Sponge.	

Application to be made to the respective Commandants of the Schools of Instruction by persons desiring to enlist, as follows:—

- School of Cavalry, at Quebec.
- Royal School of Artillery, (" B " Battery), at Quebec.
- do (" A " do), at Kingston, Ont.
- School of Infantry (" A " Company), at Fredericton, N. B.
- do (" B " do), at St. Johns, Que.
- do (" C " do), at Toronto, Ont.
- School of Mounted Infantry at Winnipeg, Man.



MILITIA LAND GRANTS AND SCRIP.

48-49 VICTORIA.

CHAP. 73.

An Act to authorize grants of land to members of the Militia Force lately on active service in the North-West.

Assented to 20th July, 1885.

WHEREAS, it is right to recognize the services of the members of the enrolled militia force actively engaged in suppressing the late half-breed and Indian outbreak in the North-West, by giving to each, in addition to the pay and allowances to which he is entitled under the Militia Act, a grant of land; and it is expedient that the grant should be made in such form as will be conducive to the actual settlement of the public lands of Canada: Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The Governor General in Council is hereby authorized to grant to each member of the enrolled militia force actively engaged and bearing arms in the suppression of the Indian and half-breed outbreak, and serving west of Port Arthur, since the twenty-fifth day of March now last, including officers, non-commissioned officers and men, a free homestead of two adjoining quarter sections (comprising an area of three hundred and twenty acres in all) of any even-numbered section of unoccupied and unclaimed Dominion lands in Manitoba or the North-West Territories open for homestead and pre-emption entry, subject to the condition that the grantee, or his duly constituted substitute, shall have selected and entered the said two quarter sections in the Dominion Land Office for the land district in which they may be situated, on or before the first day of August, eighteen hundred and eighty-six:

Provided that the said grantee, or his substitute, as the case may be, shall perfect the entry made as aforesaid, by commencing actually to reside upon and cultivate the land within six months from and after the first day of August, eighteen hundred and eighty-six, and shall thereafter continue to reside upon and cultivate the said land for the period and in accordance with the terms and conditions prescribed by the homestead provisions of "*The Dominion Lands Act, 1883*:" Provided also, that no substitute to be selected by a grantee shall be a person who is not eligible under the provisions of the said Act to obtain entry for a homestead: And provided further, that in case a substitute be selected by a grantee, as here in-

before provided, the land shall be entered in the name of the substitute, and upon compliance with the conditions in that behalf prescribed by the homestead provisions of the said Act, the patent for the two quarter sections shall be issued in the name of the said substitute.

2. Any person entitled under the foregoing provisions to select and enter, either by himself or by his substitute, three hundred and twenty acres of land as a homestead, in the manner and subject to the terms and conditions hereinbefore prescribed, may, in lieu thereof, if he so chooses, receive scrip for eighty dollars, which shall be accepted in payment of any Dominion lands open for sale, or in payment of pre-emptions, or of rents of Dominion lands leased for grazing or hay-cutting purposes; but any person choosing to take scrip, as herein provided, must notify the Minister of the Interior of his choice on or before the first day of August, eighteen hundred and eighty-six.

3. All grants of land or scrip, as the case may be, issued in accordance with the foregoing provisions, shall be made by the Minister of the Interior, upon a warrant in favor of the person entitled thereto issued by the Minister of Militia and Defence, which shall be recorded in the Department of the Interior, under clause twenty-one of "The Dominion Lands Act, 1883;" and all scrip issued under the second section of this Act shall be subject in all respects to the provisions of the said clause twenty-one, and also of clause twenty-two of the said Act.

4. The entries to be made and the patents to be issued under this Act shall not be subject to the dues and charges exacted in the case of ordinary homestead entries.

The following sections and subsections of the "Dominion Lands Act, 1883," as amended by 47 Vic., cap. 25 (1884), are those which should be read in connection with the Act to authorize grants of land to members of the Militia Force lately on active service in the North-West.

HOMESTEAD RIGHTS.

27. Any person, male or female, who is the sole head of a family, or any male who has attained the age of eighteen years, shall, on making application in the form A in the schedule to this Act, be entitled to obtain homestead entry for any quantity of land not exceeding one quarter-section, and being of the class of land open, under the provisions of this Act, to homestead entry;

(2.) Such person shall also, in connection with such homestead entry, be entitled to the privilege of obtaining at the same time, but not at a later date, a pre-emption entry for an adjoining unoccupied quarter-section or part of a quarter-section of land of the said class;

(3.) The entry for a homestead and for its attached pre-emption, if any, shall entitle the recipient to take, occupy and cultivate the land entered

for, and hold possession of the same to the exclusion of any other person or persons whomsoever, and to bring and maintain actions for trespass committed on the said land; the title to the land shall remain in the Crown until the issue of the patent therefor, and the said land shall not be liable to be taken in execution before the issue of patent;

(4.) The privilege of homestead and pre-emption entry shall only apply to surveyed agricultural lands; no person shall be entitled to such entry for land valuable for its timber, or for hay land, or for land on which there is a stone or marble quarry, or coal or other mineral having commercial value, or whereon there is any water power which may serve to drive machinery, or for land which, by reason of its position, such as being the shore of an important harbor, bridge site or canal site, or being either an actual or prospective railway terminus or station, it will be in the public interest to withhold from such entry.

31. Any person who has obtained homestead entry shall be allowed a period of six months from its date within which to perfect the entry by taking, in his own person, possession of the land and beginning continuous residence thereon and cultivation thereof; and if the entry be not perfected within that period, it shall be void, and the land shall be open to entry by another person, or to other disposition under this Act, by the Minister of the Interior.

33. At the expiration of three years from the date of his perfecting his homestead entry, the settler, or, in case of his death, his legal representatives, upon proving to the satisfaction of the local agent, that he, or they, or some of them, have resided upon and cultivated the land during the said term of three years, shall be entitled to a patent for the land, provided such proof is accepted by the Commissioner of Dominion Lands, or the Land Board: Provided also, that the patent therefor shall not issue to any person not then a subject of Her Majesty by birth or naturalization;

(4.) Proof of the residence, erection of a habitable house and cultivation required by this clause, shall be made by the claimant by affidavit, and shall be corroborated by the evidence on oath of two disinterested witnesses, resident in the vicinity of the land affected by their evidence, and accepted as sufficient by the Commissioner of Dominion Lands or the Land Board; such affidavit shall be sworn and such testimony given before the local agent or some other person named for that purpose by the Minister of the Interior;

(6.) In addition to the cases hereinbefore mentioned, any person claiming a patent for a homestead or for a homestead and pre-emption, shall be entitled thereto upon proving that he has erected upon his homestead a habitable house and has *bonâ fide* resided therein for not less than three months next prior to the date of his application for his patent; that for the period between the time within which, by clause thirty-one of this Act, it is provided that a homesteader shall perfect his entry, and the commencement of his said three months' residence upon his homestead, he has been *bonâ fide* resident within a radius of two miles from his homestead quarter-

section ; that within the first year after the date of his homestead entry he had broken and prepared for crop not less than ten acres of his homestead quarter-section ; that within the second year he had cropped the said ten acres and broken and prepared for crop not less than fifteen acres additional—making not less than twenty-five acres ; and that within the third year after the date of his homestead entry, he had cropped the said twenty-five acres and broken and prepared for crop not less than fifteen acres additional, making in all not less than twenty-five acres of the said homestead cropped, and fifteen acres additional thereof broken and prepared for crop, within three years of the date of perfecting his homestead entry ; and the residence described in this sub-clause shall be sufficiently fulfilled if the applicant has not been absent from his residence for more than six months in any one year.

34. In case it is proved to the satisfaction of the Minister of the Interior that a settler has not resided upon and cultivated his homestead, except as herein provided for, at least six months in any one year, the right to the land shall be forfeited, and the entry therefor shall be cancelled ; and the settler so forfeiting his entry shall not be eligible to obtain another entry except in special cases in the discretion of the Minister of the Interior ;

(2.) Provided, that in cases of illness, vouched for by sufficient evidence, or in the cases of immigrants requiring to return to their native land to bring out their families to their homesteads, or in other special cases, the Minister of the Interior may, in his discretion, grant an extension of time, during which a settler may be absent from his homestead, without prejudice to his right therein ; but the time so granted shall not count as residence.

36. Any assignment or transfer of homestead or pre-emption right or any part thereof, and any agreement to assign or transfer any homestead or pre-emption right or any part thereof after patent, which shall have been obtained, made or entered into before the issue of the patent, shall be null and void ; and the person so assigning or transferring or making an agreement to assign or transfer, shall forfeit his homestead and pre-emption right, and shall not be permitted to make another homestead entry : Provided, that a person whose homestead or homestead and pre-emption may have been recommended for patent by the local agent, and who has received from such agent a certificate to that effect in the form M, in the schedule to this Act, countersigned by the Commissioner of Dominion Lands, may legally dispose of and convey, assign or transfer his right and title therein.

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DEPARTMENT OF INDIAN AFFAIRS.

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Lands in the Undermentioned Localities are Offered

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ON THE GREAT MANITOULIN ISLAND,

LAKE HURON, ONTARIO.

Mr. J. C. PHIPPS, of Manitowaning, is the agent for sale of lands in the following Townships on this Island:—ASSIGNACK, BIDWELL, HOWLAND, SHEGUIANDAH, BILLINGS, CAMPBELL, CARNARVON, ALLAN, TEHKUMMAH, and SANDFIELD, and in the Townplots of SHEGUIANDAH, MANITOWANING and SHAFESBURY (commonly called LITTLE CURRENT).

Mr. CHAS. B. SAVAGE, of Gore Bay, is the agent for the sale of lands in the Townships of GORDON, MILLS, BURPEE, and BARRIE ISLAND and Townplot of GORE BAY.

Mr. B. W. ROSS, of Cockburn Island, is agent for lands on that island as well as for those in the Townships of ROBINSON and DAWSON, on Manitoulin Island, townplot of TOLSMAYVILLE, COCKBURN ISLAND.

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(ONTARIO.)

The lands in the Township of AMABEL, ALBEMARLE, KEPPEL, EASTNOR, LINDSAY and St. EDMUNDS; as well as in several Townplots in the Peninsula; are offered for sale through Mr. B. B. MILLER, Indian Lands Agent, at Wiarton, County of Bruce, Ont.

On the Garden River Reserve

(ONTARIO.)

Mr. WILLIAM VAN ABBOTT, of Sault Ste. Marie, is agent for the sale of Lands within this tract, and which are situated in the Townships of MACDONALD, LAIRD and MEREDETH: also for lands within the tract commonly known as the Batchewana Bay Indian Reserve and comprised in the Townships of

AWERES, FENWICK, KARS, PENNEFATHER, DENNIS, HERRICK,
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TUPPER AND ARCHIBALD.

A Leading Road is at present in course of completion through these Lands, and will, when completed, afford ready communication with other parts of the Country to intending settlers.

The Conditions of Sale

In respect to the lands within the Townships above described can be ascertained on application to the respective agents.

By Order,

L. VAN KOUCHNET,

Deputy Supt. Gen. of Indian Affairs.

DEPARTMENT OF INDIAN AFFAIRS,
OTTAWA.



REGULATIONS made under the authority of the "Naturalization Act, Canada, 1881," approved by His Excellency the Governor-General in Council, on the 19th day of December, 1883.

1. The time within which an alien's three years' residence or service must be had before taking the oaths or affirmations of residence and allegiance, and procuring the same to be filed of record as provided in the tenth section of the said Act is limited to five years immediately preceding the taking of such oaths or affirmations.

2. In the North-West Territories and the District of Keewatin, the certificate mentioned in the twelfth section of the said Act shall be presented to one of the Stipendiary Magistrates of the North-West Territories, who shall take such measures to satisfy himself that the facts stated in the certificate are true, as shall in each case appear to him to be necessary; and when satisfied that the facts stated in the certificate are true, he shall grant to the alien a certificate of naturalization authenticated under his hand and seal.

Each Stipendiary Magistrate shall keep a record of the certificates presented to and filed with him; also a record of all certificates of naturalization granted by him, of which he is hereby authorized at any time to give a certified copy.

3. The forms of declarations of alienage made in pursuance of the said Act shall be respectively as follows:

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Naturalized British Subject.

I, *A. B.*, of _____, having been naturalized as a British subject on the _____ of _____, 18____, do hereby, under the provisions of the Order of the Governor-General in Council of the _____, and of the treaty between Great Britain and *C. D.*, renounce my naturalization as a British subject, and declare that it is my desire to resume my nationality as a subject [or citizen] of *C. D.*

Made and subscribed this _____ (Signed) *A. B.*
 day of _____, 18____, before me
 (Signed) *E. F.*
 Justice of the Peace,
 [or other official title].

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Person born within British Dominions, but also a Subject or Citizen of a Foreign State by the law thereof.

I, *A. B.*, of _____, being held by the common law of Great Britain to be a natural born subject of Her Britannic Majesty's by reason of my having been born within Her Majesty's dominions, and being also held by the law of *C. D.*, to have been at my birth, and to be still, a subject [*or citizen*] of *C. D.*, hereby renounce my nationality as a British subject, and declare that it is my desire to be considered and treated as a subject [*or citizen*] of *C. D.*

(Signed) *A. B.*

Made and subscribed this _____ day of _____ 18 _____, before me,

(Signed) *E. F.*,

Justice of the Peace

[*or other official title*].

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of Alienage by a Person who is by origin a British Subject.

I, *A. B.*, of _____, having been born out of Her Britannic Majesty's Dominions of a father being a British subject, do hereby renounce my nationality as a British subject.

(Signed) *A. B.*

Made and subscribed this _____ day of _____ 18 _____, before me,

(Signed) *G. H.*,

Justice of the Peace

[*or other official title*].

THE NATURALIZATION ACT, CANADA, 1881.

Declaration of British Nationality.

I, *A. B.*, of _____, being a natural-born subject of Her Britannic Majesty, and having voluntarily become naturalized as a subject [*or citizen*] of *C. D.*, on the _____ of _____ 18 _____, do hereby renounce such naturalization, and declare that it is my desire to be considered and treated as a British subject.

(Signed) *A. B.*

Made and subscribed this _____ day of _____ 18 _____, before me,

(Signed) *E. F.*,

Justice of the Peace

[*or other official title*].

NOTE.—The Act under which this declaration is made provides that the declarant "shall not within the limits of the Foreign State in which he was naturalized be deemed within Canada to be a British subject, unless he has ceased to be a subject of the State in pursuance of the laws thereof or in pursuance of a treaty to that effect."

4. Every declaration, whether of alienage or British nationality, made in pursuance of the said Act, shall be deposited and registered in the office of the Secretary of State of Canada :

The Secretary of State of Canada, the Under Secretary of State, or the Deputy Registrar-General of Canada may give certified copies of any such declaration for the purposes mentioned in the said Act.

5. With the consent of the Treasury Board, the following provision is made in regard to the imposition and application of fees :—

Matter in which fee may be taken.	Am't of fee.	How to be applied.
For taking a declaration, whether of alienage or British nationality	\$ cts. 0 40	To the Justice or other official taking declaration.
For administering the oath of allegiance.....	0 40	
For registration of declaration, with or without the oath of allegiance.....	1 00	Consolidated Revenue of Canada.
For certified copy of declaration, with or without an oath.....	1 00	Consolidated Revenue of Canada.

J. A. CHAPLEAU,
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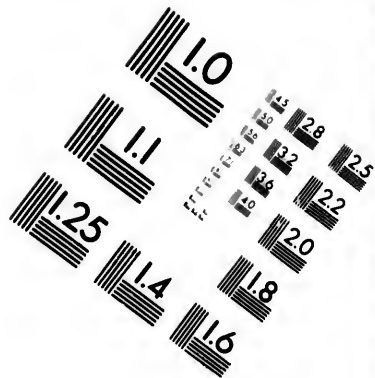
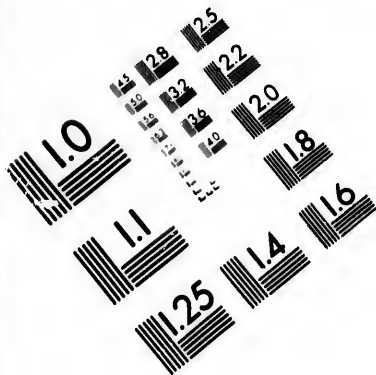
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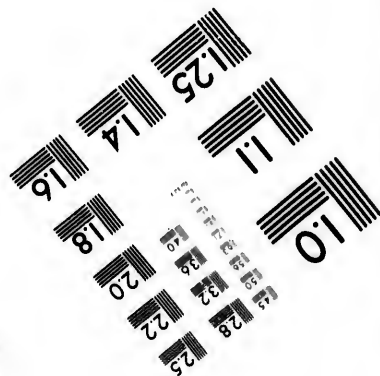
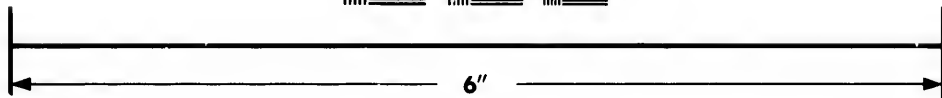
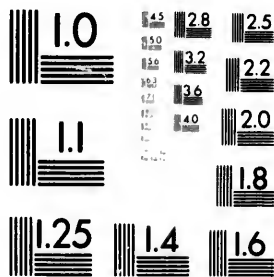
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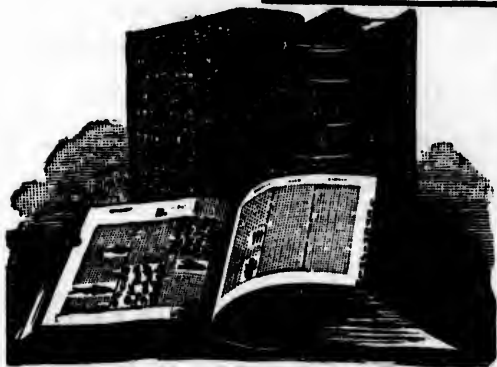
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