

[Crown Copyright Reserved.]

MANUAL
OF
MILITARY LAW.

WAR OFFICE.

1914.



REPRINTED WITH THE PERMISSION OF THE CONTROLLER, HIS MAJESTY'S
STATIONERY OFFICE, LONDON

BY
SUPERINTENDENT GOVERNMENT PRINTING, INDIA
CALCUTTA
1918

Price Re. 1 and As. 12 or 2 Shillings.

MANUAL OF MILITARY LAW.

PREFACE TO THE FIRST EDITION.

In July, 1879, Colonel the Rt. Hon. F. Stanley, M.P. (a), then Secretary of State for War, requested the Parliamentary Counsel Office to undertake the work of preparing rules of Procedure, under Section 69 of the Army Discipline and Regulation Act, 1879, and also of superintending the preparation of a Manual, which should contain an edition of the Act and of the above Rules with notes, and form a text book on Military Law. The work was commenced at once by the Parliamentary Counsel Office.

The Rt. Hon. Hugh C. E. Childers, M.P., on becoming Secretary of State for War in 1880, approved of the continuance of the work; and the present book, which is the result, was provisionally circulated by his authority, and is now issued by the authority of his successor, the Rt. Hon. the Marquis of Hartington, M.P. (b).

Before the Rules of Procedure could be finally settled, the Army Discipline and Regulation Act, 1879, was repealed and replaced by the Army Act, 1881, and a complete revision of Section VI (Discipline) of the Queen's Regulations, 1885, also took place.

These changes explain the delay which unavoidably occurred in the completion of the work commenced in 1879.

The book contains chapters giving a general view of the Army Act, 1881, of the Rules of Procedure, and of the history of military law and organisation. Chapters have also been added on collateral matters, as the Law of Riot, &c., and the Customs of War. These form Part I of the book.

The Army Act, 1881, and the Rules of Procedure with explanatory notes follow; and these, with some additional forms, &c., complete Part II of the book. Part III contains miscellaneous enactments, regulations, and forms, including the Regimental Debts Act, and the regulations made under it; and a set of forms illustrative of the chapter on the Customs of War.

The chapters were written by Sir Henry Thring, K.C.B., Parliamentary Counsel (c); Mr. H. Jenkyns, C.B., Second Parliamentary Counsel (d); Mr. C. P. Ilbert, legal member

(a) Subsequently the Earl of Derby.

(b) Subsequently the Duke of Devonshire.

(c) Subsequently Lord Thring, K.C.B.

(d) Subsequently Sir H. Jenkyns, K.C.B., and Parliamentary Counsel.

of the Council of the Viceroy of India (a); Lt.-Col. Blake, R.M.L.I.; Mr. A. C. Meysey-Thompson, of the Inner Temple; and the Editor. The Notes to the Army Act and to the Rules were for the most part written by Mr. H. Jenkyns and the Editor; the valuable notes of the decisions of the Judge Advocate-General have been supplied from the office of the Judge Advocate-General, and the illustrations of the forms of charges have been framed by Col. Rocke, Deputy Judge Advocate. The Index was framed by Mr. W. L. Selfe, of Lincoln's Inn. (b).

The general editorship of the work was entrusted to Mr. G. A. R. FitzGerald, of the Parliamentary Bar, who has during its preparation been in constant communication with the office of the Parliamentary Counsel. Brigadier-General Elles, C.B., late Assistant-Adjutant-General (c), has rendered invaluable aid during its whole progress. The Editor is also much indebted to the criticisms and careful corrections of Mr. W. L. Selfe.

Acknowledgment also is due to Major-General R. Carey, C.B., late Deputy Judge Advocate, for the free use of his "*Military Law and Discipline*," a work on the Mutiny Act and Articles of War, which was undertaken and completed shortly before the old form of the Military Code became obsolete. On this account the work, although printed by authority at the War Office, was never published.

The debt which the army owes to the late Captain T. F. Simmons for his book on the Constitution and Practice of Courts-Martial, and to his son (sometime Major of Brigade, North-Eastern District, and now a Canon of York), the editor of subsequent editions, is well known. The book was the only complete modern treatise on the practice of courts-martial, which is almost as important as the military law itself.

Some of the editions were undertaken at the request of the military authorities, and in 1868 the editor was informed by the Adjutant-General that His Royal Highness the Field-Marshal Commanding-in-Chief recognised the efforts he had made in collecting the precedents, rules and axioms which guided the administration of military law. (d)

The value of the labours of the author and editor has been still further illustrated by the new Rules of Procedure, which in many instances embody the course of procedure suggested in "*Simmons on Courts-Martial*."

(a) Now Sir C. P. Ilbert, K.C.S.I., and Clerk of the House of Commons, late Parliamentary Counsel.

(b) Now Sir William Lucius Selfe.

(c) Subsequently Major-General Sir W. K. Elles, K.C.B.

(d) In the Queen's Regulations of 1868 the book was recommended as a useful book of reference, and in the General Order of 1st November, 1873, prescribing the examination of regimental officers previous to promotion, it was mentioned as useful for officers preparing for examination.

When the Army Discipline and Regulation Act of 1879 passed, the Rev. Canon Simmons, learning that the Secretary of State contemplated the issue of a Manual of Military Law under authority, generously placed his book at the disposal of the Secretary of State for the good of the Service. The readers of the present Manual will see that extensive use has been made of the offer, and that much of "Simmons on Courts-Martial" survives in the following pages.

The book has been submitted to and carefully revised by the Rt. Hon. G. O. Morgan, Q.C., M.P., Judge Advocate-General. (a).

His Royal Highness the Field-Marshal Commanding-in-Chief has also been pleased to approve of the work.

An abbreviated edition of the work, in the form of a practical manual, will be issued as soon as possible.

May, 1884.

(a) Subsequently Sir G. O. Morgan, Bart.

ADVERTISEMENT TO THE SECOND EDITION.

This edition has been revised throughout by the Editor with the advice and assistance of Mr. Jenkyns and Colonel W. R. Lascelles, A.A.G.

November, 1887.

ADVERTISEMENT TO THE THIRD EDITION.

New Rules of Procedure were issued in 1893, chiefly in consequence of the amendments made in the Army Act, which fused together the Field General Court-Martial and the Summary Court-Martial; and these Rules, as well as the various amendments of the Army Act, are embodied in the present edition, which has again been revised by the Editor, with the advice and assistance of Colonel Hildyard, late Assistant Adjutant-General, and now Commandant of the Staff College. The Index has been completely re-cast in a form which, it is hoped, will increase its usefulness to Officers and others; and the Editor wishes particularly to acknowledge the ability and industry brought to this portion of the work by Mr. James Huggett, of the War Office.

July, 1894.

ADVERTISEMENT TO THE FOURTH EDITION.

The former Editor, Mr. G. A. R. FitzGerald, has been reluctantly obliged to relinquish the editorship, and Mr. F. F. Liddell (*a*) has been appointed to succeed him.

The chief changes in this edition are due to the application of the Criminal Evidence Act, 1898, to courts-martial. Rules for that purpose were published early in 1899. These have since been incorporated in a new edition of the rules, which also makes a few other slight changes in court-martial procedure.

In revising the book the Editor has had the benefit of the assistance of Major W. D. Jones, of the Wiltshire Regiment, and is especially indebted to him in respect of the revision of Chapters X and XI and the Appendices to the Rules.

Chapter VI has been revised by Sir C. P. Ilbert, who has been aided in the revision by Mr. W. Guy Granet, (*b*) Barrister-at-Law.

Chapter VII has been rewritten by the Editor with the assistance of Sir John Scott, K.C.M.G., Deputy Judge Advocate-General.

Chapter IX has been revised by Sir Henry Jenkyns, who is indebted for valuable suggestions to Mr. Oman, Fellow of All Souls College, and Mr. Hassall, Student of Christ Church, Oxford.

In Part III the Volunteer Acts have been added. A table of the contents of the chapters has been added, and the index recast in a shorter form.

August, 1899.

(*a*) Now Second Parliamentary Counsel.

(*b*) Now Sir W. Guy Granet.

ADVERTISEMENT TO THE FIFTH EDITION.

This edition has been edited by Mr. W. M. Graham-Harrison (a) in succession to the late Editor, Mr. F. F. Liddell, who resigned on being appointed Second Parliamentary Counsel.

The various amendments made in the Army Act since 1899 (especially the introduction of the punishment of detention), and the re-organisation of the system of commands and of the War Office, have necessitated a new issue of the Rules of Procedure (which is embodied in this edition), and a considerable number of alterations in other parts of the Manual.

The index is entirely new, and has been prepared in the War Office, under the supervision of the Editor.

The Editor is indebted to Mr. H. W. C. Davis, Fellow of Balliol College, Oxford, for several corrections in Chapters II and IX.

The Territorial and Reserve Forces Act, 1907, did not become law till after all the book was in type, and in consequence it has been found impossible, without unduly delaying the issue of this edition, to insert in Chapter XI or elsewhere an account of all the alterations effected by that enactment.

November, 1907.

(a) Now Solicitor to the Board of Customs and Excise.

ADVERTISEMENT TO THE SIXTH EDITION.

This edition has been edited by the Hon. Hugh Godley, Mr. Graham-Harrison, the late editor, having resigned on his appointment as Solicitor to the Board of Customs and Excise.

The New Edition contains an entirely new chapter (Chapter XIV) on the laws and usages of war, which has been written by Col. J. E. Edmonds, C.B., and Mr. L. Oppenheim, LL.D.

Chapter XI has been largely re-written in consequence of the reorganisation of the Army which took place in 1908, and the same cause has led to considerable alterations in other parts of the Manual. For instance, in Part III the Enactments relating exclusively to the Militia, Yeomanry and Volunteers have been omitted. On the other hand, certain other Acts relating to military matters have been included, e.g., the Official Secrets Act, 1911.

The Editor is under great obligations to Lieut. Cauvin of the War Office, who has rendered invaluable help both in the general revision of the Manual and especially in the re-writing of Chapter XI.

The Editor is also indebted to Mr. V. M. Coutts-Trotter, Barrister-at-Law, for valuable suggestions in connection with Chapters VI and VII; the consequential alterations in the text of those chapters have in each case received the approbation of the original authors.

The index has been revised in the War Office,

February, 1914.

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

“The Editor
(Manual of Military Law),
Care of the Secretary of the War Office,
War Office, S.W.”

CONTENTS.

CHAPTER	PART I.	PAGE
I.—INTRODUCTORY		1
	Written by Lord Thring.	
II.—HISTORY OF MILITARY LAW		6
	Written by Lord Thring.	
III.—OFFENCES AND SCALE OF PUNISHMENTS		15
	Written by Mr. G. A. R. FitzGerald.	
IV.—ARREST : INVESTIGATION BY COMMANDING OFFICER : SUMMARY POWER OF COMMANDING OFFICER : PRO- VOST-MARSHAL : DISCIPLINE ON BOARD HIS MAJESTY'S SHIPS		25
	Written by Mr. G. A. R. FitzGerald, assisted by Sir H. Jenkyns.	
V.—COURTS-MARTIAL		35
	Written by Mr. G. A. R. FitzGerald, assisted by Sir H. Jenkyns.	
VI.—EVIDENCE		55
	Written by Sir C. P. Iibert.	
VII.—OFFENCES PUNISHABLE BY ORDINARY LAW		85
	Originally written by Mr. A. C. Meysey-Thompson, Q.C. Re-written by Mr. F. F. Liddell.	
VIII.—POWERS OF COURTS OF LAW IN RELATION TO COURTS- MARTIAL AND OFFICERS		120
	Written by Lt.-Col. Blake, R.M.L.I., and Mr. G. A. R. FitzGerald.	
IX.—HISTORY OF THE MILITARY FORCES OF THE CROWN		147
	Written by Sir H. Jenkyns.	
X.—ENLISTMENT		186
	Written by Sir H. Jenkyns.	
XI.—CONSTITUTION OF THE MILITARY FORCES OF THE CROWN		194
	Originally written by Sir H. Jenkyns. Re-written in 1914.	
XII.—RELATION OF OFFICERS AND SOLDIERS TO CIVIL LIFE		213
	Written by Sir H. Jenkyns.	
XIII.—SUMMARY OF THE LAW OF RIOT AND INSURRECTION		216
	Written by Lord Thring.	
XIV.—THE LAWS AND USAGES OF WAR ON LAND		222
	Written by Col. J. E. Edmonds, C.B., and Mr. I. Oppenheim, I.L.D.	

PART II.

	PAGE
THE ARMY (ANNUAL) ACT, 1913	367
THE ARMY ACT, with Notes	370
RULES OF PROCEDURE, with Notes	571
Appendix I. (Forms of Charges)	646
Further Illustrations of Charges	660
Appendix II. (Forms as to Courts-Martial)	677
Memoranda for the guidance of Courts-Martial	702
Appendix III. (Forms of Commitment)	707
RULES FOR FIELD PUNISHMENT	721
FORM OF COURT-MARTIAL WARRANTS	722
FORM OF APPLICATION FOR COURT-MARTIAL	727
ORDERS IN COUNCIL (DISCIPLINE ON BOARD SHIP)	728

PART III.**MISCELLANEOUS ENACTMENTS, REGULATIONS, AND FORMS.**

The Railway Regulation Act, 1842	735
The Railway Regulation Act, 1844	736
The Regulation of the Forces Act, 1871	737
The Cheap Trains Act, 1883	738
The National Defence Act, 1888	740
The Reserve Forces Act, 1882	741
The Reserve Forces Act, 1890	750
The Reserve Forces and Militia Act, 1898	750
The Reserve Forces Act, 1899	751
The Reserve Forces Act, 1900	751
The Reserve Forces Act, 1906	752
The Territorial and Reserve Forces Act, 1907	753
The Officers Commissions Act, 1862	777
The Local Government Act, 1888	777
The Regimental Debts Act, 1893	779
Regulations thereunder	786
Royal Warrant—Soldiers' Effects Fund	797
The Friendly Societies Act, 1896	798
The Official Secrets Act, 1911	799

LIST OF ABBREVIATED REFERENCES.

A.A.	Army Act.
A.A.A.	Army (Annual) Act.
A.F.	Army Form.
American Instructions	Instructions for the Government of the Armies of the United States in the Field, 1863.
A.O.	Army Order.
Ariga	La Guerre Russo-Japonaise au point de vue continentale et le droit International, by N. Ariga, 1908.
Bac. Abr.	Bacon's Abridgment of the Law, 5th edition, 1798.
Barn. & Adol.	Barnewall and Adolphus' Reports, King's Bench, 5 vols., 1830-34.
Barn. & Ald.	Barnewall and Alderson's Reports, King's Bench, 5 vols., 1817-22.
Barn. & Cr.	Barnewall and Cresswell's Reports, King's Bench, 10 vols., 1822-30.
Best and Smith	Best and Smith's Reports.
Brenet	La France et l'Allemagne devant le Droit International, 1870-71, by A. Brenet, 1902.
Bro. P. C.	Brown's Cases in Parliament.
Broderip & Bingham.	Broderip and Bingham's Reports.
Burr	Furrow's Reports, 5th edition, 5 vols., 1812.
Calve	Le Droit International by C. Calvo, 5th edition, 1896.
Campbell	Campbell's Reports.
Car. & Marsh	Carrington & Marshman's Reports.
C. & P.	Carrington & Payne's Reports, 9 vols., 1823-41.
Christian's Blackstone	Blackstone's Commentaries on the Laws of England, edited by Edward Christian, 4 vols., 1803.
Clode Mil. Forces	Clode's Military Forces of the Crown, 2 vols., 1869.
Cobbett, Parl. Hist.	Cobbett's Parliamentary History.
Coke Inst.	Coke's Institutes of the Laws of England, 4 vols., 1832 and 1817.
Comm. Journ.	Journal of the House of Commons.
Com. Dig.	Comyn's Digest of the Laws of England, 5th edition, 7 vols., 1822.
Cox Crim. Ca.	Cox's Criminal Cases.

Dowl. & R.	Dowling and Ryland's Reports.
East	East's Reports, 16 vols., 1801-14.
F. & F.	Foster and Finlason's Reports.
French Manual	Manuel de Droit International à l'usage des officiers de l'armée de terre, 3rd edition, 1893.
Geneva Conference Actes.	Convention de Genève. Actes de la Conférence de Révision. Genève, 1906.
Geneva Convention	Convention for the Amelioration of the Condition of the Wounded and Sick of Armies in the Field.
Grose, Mil. Antiquities	Military Antiquities and History of Ancient Armour, by Capt. F. Grose, 1801.
Guolle	Précis des lois de la Guerre, by J. Guolle, vol. 1, 1884.
Hague Conference, 1899.	Blue Book. Correspondence respecting the Peace Conference held at The Hague in 1899. C. 9534.
Hague Conference, 1907 Actes.	Deuxième Conférence International de la Paix. Actes et documents. The Hague, 1907.
Hague Rules	Annex to the Convention concerning the Laws and Customs of War on Land, 1907, entitled "Regulations respecting the laws and customs of war on land."
Hale, Hist. Com. Law	Hale's History of the Common Law, 4th Edition.
Hallam, Const. Hist.	Constitutional History of England, by A. H. Hallam.
Hawkins	Hawkins' Pleas of the Crown, 2 vols., 6th edition, 1777.
Holtzendorff	Handbuch des Völkerrechts, edited by Dr. F. von Holtzendorff, vol. IV, 1889.
Hough, Mil. Prec.	Precedents in Military Law, by W. Hough, Lieut.-Col. E.I.C.S., 1855.
Jur. (N.S.)	Jurist (new series).
K.R.	The King's Regulations and Orders for the Army (1912 edition).
Kriegsbrauch	Kriegsbrauch im Landkriege (Kriegsgeschichtliche Einzelschriften), edited by the German Great General Staff (Military Historical Section). Berlin, 1902.
L.J. (N.S.)	Law Journal (new series).
Loening	Professor Loening's Articles in the "Revue Droit International," 1872 and 1873.
Longuet	Le droit actuel de la guerre terrestre, by Captain F. Longuet, 1901.
L.R., Ch. Div.	Law Reports, Chancery Division.
L.R., C.C.R.	Law Reports, Crown Cases Reserved
L.R., Ex.	Law Reports, Exchequer.
L.R., H.L.	Law Reports, English and Irish Appeals (House of Lords).
L.R., P.C.	Law Reports, Privy Council Appeals.
L.R., Q.B.	Law Reports, Queen's Bench.

L.R., Q.B.D. . . .	Law Reports, Queen's Bench Division.
L.R. [18] A.C. . .	Law Reports, Appeal Cases since 1890.
L.R. [18] Ch. . .	Law Reports, Chancery Division, since 1890.
L.R. [19] K.B. . .	Law Reports, King's Bench Division, since 1901.
L.R. [18] Q.B. . .	Law Reports, Queen's Bench Division, 1890 to 1901.
Lewin, C.C. . . .	Lewin's Crown Cases.
Lords Journ. . . .	Journals of the House of Lords.
Lord Raymond. . .	Lord Raymond's Reports, 2 vols., 4th edition, 1792.
Man. & Gr. . . .	Manning and Granger's Reports.
M. & S. . . .	Maule and Selwyn's Reports, 6 vols., 1814-29.
M. & W. . . .	Meeson and Welsby's Reports, 16 vols. 1837-49.
Mod. Rep. . . .	Modern Reports, 12 vols., 5th edition, 1793.
Moo. C.C. . . .	Moody's Crown Cases Reserved.
Moore's Digest . . .	A Digest of International Law, by J. B. Moore, Washington, 1906.
Neutrality Convention	Convention respecting the Rights and Duties of Neutral Powers and Persons, 1907.
Official Account of Franco-German War	The Franco-German War, 1870-71, translated by Major F. C. H. Clarke, London, 1874-84.
Opening of Hostilities Convention.	Convention Relative to the Opening of Hostilities, 1907.
Oppenheim	International Law, by L. Oppenheim, vol. I., 1905; vol. II., 1906.
P.W.	Pay Warrant.
S.A.O.	Special Army Order.
Shower's Rep. . . .	Shower's Reports, 2 vols. 2nd edition, 1794.
Smith, Lead. Ca. . .	Smith's Leading Cases, 11th edition.
Steph. Comm. . . .	Stephen's Commentaries on the Laws of England, 4 vols. 14th edition, 1903.
Steph. Dig. Crim. Law	Digest of the Criminal Law, by Sir James Fitzjames Stephen, K.C.S.I. 6th edition, 1904.
Steph. Dig. Ev. . . .	Digest of the Law of Evidence, by Sir James Fitzjames Stephen, K.C.S.I., 6th edition, 1904.
Stubbs, Constit. Hist.	Constitutional History of England, by William Stubbs, M.A. Regius Professor of Modern History, Oxford.
Takahashi	International Law applied to the Russo-Japanese War, by S. Takahashi (English edition), London, 1908.
Taunt.	Taunton's Reports (Common Pleas, 1807-19), 8 vols.
T.F.	Territorial Force.
T.F. Regs.	Regulations for the Territorial Force.
Thring	Chapter XIV., entitled "The Customs of War," by the late Lord Thring in the Manual of Military Law (1899 edition).
T.R.	Term Reports (Durnford and East), 4 vols., 1794-1809.

T.R.F. Act	The Territorial and Reserve Forces Act, 1907.
Von Widdern	Krieg an den rückwärtigen Verbindungen der deutschen Heere, 1870-71, by Colonel Cardinal von Widdern.
Washburne	An abstract from the official correspondence of E. B. Washburne, United States Minister to France, entitled "America's Aid to Germany," St. Louis, 1905. (It is therein stated that the official edition of the correspondence published by the Government Printing Office 1878, has been out of print since 1884).
W.R.	Weekly Reporter (Irish).
Well. Desp.	Wellington Despatches, 1838.
Wilson's Rep.	Wilson's Reports.
