

S U P P L E M E N T
TO
G E N E R A L O R D E R S .

SEPARATE No. 3 OF 1842.

BY THE HON'BLE THE GOVERNOR IN COUNCIL,

BOMBAY CASTLE, 16th FEBRUARY 1842.

The following Compilation of existing Orders on the subject of Courts-Martial and Courts of Requests having been approved by His Excellency the Commander in Chief, is published, with a view to its forming a Section of the New Military Code.

By order of the Hon'ble the Governor in Council,

P. M. MELVILL, Lieut. Colonel,

Secy. to Govt.

COURTS-MARTIAL & COURTS OF REQUESTS.

INCLUDING REGULATIONS RELATIVE TO JUDGE ADVOCATES AND INTERPRETERS.

GENERAL RULES.

I. The Duties attached to Officers employed on Courts-Martial, are of the most grave and important nature; and in order to discharge them with justice and propriety it is incumbent on all Officers to apply themselves diligently to the acquirement of a competent knowledge of Military Law, and to make themselves perfectly acquainted with all Orders and Regulations, and with the practice of Military Courts. With this view, the Commanding Officers of Regiments are to require all Officers, on their entrance into the Army, and before they are nominated to be Members of Courts-Martial, to attend the proceedings of such Courts, until the Commanding Officers may deem them competent for the performance of so important a Duty.

G. O. C. 9th
June 1823, as
modified by ex-
isting Laws and
Regulations.

II. To prevent the inconvenience arising from the unnecessary assembly of General Courts-Martial, whether European or Native, it is directed that all Commanding Officers, previously to transmitting Charges to Head Quarters, shall carefully investigate the circumstances on which the Charges are founded, and forward along with them a statement of the case. If the circumstance should appear to be of such a nature as not to require public investigation—or such as may be legally and efficiently tried by a Minor Court, Commanding Officers will exercise their authority in adjusting the matter in such a manner as may be most conducive to the maintenance of Military discipline.

III. Whenever an Officer is put under Arrest, he is strictly and invariably to consider himself confined to his Quarters, Tent, or other place of Residence, until regular application be made to the Commanding Officer for the liberty or range of the Garrison, Cantonment, or Camp, by whom it will in most instances be granted, or when necessary, referred to the Commander in Chief.

IV. When any European or Native Officer is put under Arrest, in order to be brought to trial before a General Court-Martial, immediate information thereof, accompanied with the Charges preferred against him, officially signed, must be sent to the Adjutant General.*

V. It is to be particularly observed that an Officer has no right to demand a Court-Martial, either on himself or on others, the granting of a Trial resting solely in the discretion of the Commander in Chief.

VI. Nor has an Officer, who may have been placed in Arrest, any right to demand a Court-Martial on himself, or to persist in considering himself under the restraint of such Arrest, after he shall have been released by proper Authority, or to refuse to return to the exercise of his duty.

VII. In drawing up Charges, the utmost precision must be observed in specifying the Fact to which criminality is attached, and in describing the time and place, when and where such Fact took place by inserting the words "on or about," "at or near." But in framing a Charge for insubordinate or improper languages, the expressions which may have been used by the Prisoner are not to be specified.

VIII. There appears to the Commander in Chief occasionally to be an affectation of imitating the minutiae of the practice of Civil Courts, introduced into the Charges laid before Courts-Martial. Details quite unnecessary before Military Courts! Thus, in a Charge is introduced the disgusting expressions of a drunken, or mutinous Soldier who has forgotten himself; and these have appeared both in Hindoostanee and English, in the body of the Charges. This practice seems quite unnecessary for the ends of justice, since the Soldier's crime would have been as well developed under the simple charge of "unsoldierlike" or "insubordinate" or "improper" language, as when aided by the unqualified nakedness of the words thus especially charged.

IX. Facts of a distinct nature, are not to be included in one and the same Charge, or Instance of a Charge, but each different Fact is to be specified in a distinct Instance or Charge.

X. All extraneous matter is to be carefully avoided, and nothing is to be alleged but that which is culpable, and which the Complainant is prepared to substantiate before a Court-Martial.

XI. It is not necessary that it shall be specified in a Charge, that the Offence alleged has been committed in breach of any particular Article of War or Statute. But in cases in which the allegation comes directly under any Enactment, it is to be set forth in the terms therein used: and when it is a disorder or neglect not specifically provided for, it is to be charged—(if the accused be an Officer or Soldier) as conduct "to the prejudice of good order and Military discipline."

XII. It is not to be supposed that a Charge is of course to be laid before a Court-Martial, in the form in which it has been drawn up by the Complainant, as it is competent for the Officer who may order the Court to be assembled, to make such alterations ~~to~~, either in its substance, or in other respects, as he may deem requisite.

XIII. But after a Charge has been approved of by proper Authority, and ordered to be investigated, it is not competent for the Judge Advocate or any other Person, to make any alterations in it, without the consent of such Authority being previously obtained,

* N. B. All Correspondence respecting Offences committed by Officers or Soldiers of H. M. Service, is to pass through the channel of the Deputy Adjutant General, Queen's Troops.

XIV. It is highly improper that Charges should be kept in reserve against an Officer or Soldier, until they have accumulated, and that they should then be brought before a General Court-Martial collectively: Whereas every Charge should be preferred at the time, when the Fact or Facts on which it turns, was recent, or, if knowingly passed over, it ought not either in candour or in justice to be in future brought into question:

XV. After a Prisoner has been arraigned on specific Charges, it is perfectly irregular for a Court-Martial to admit of any additional Charge being preferred against him, even although he may not have come on his Defence. The Trial on the Charges first preferred, must be regularly concluded, and then, if necessary, the Prisoner may be tried on any further accusation that is brought against him.

XVI. No Officer or Soldier, being acquitted or convicted of any Offence, is liable to be tried a second time for the same Offence. But it must be observed, that this provision applies solely to trial for the same identical Act and Crime, and to such persons as have in the first instance been *legally* tried. For if any illegality takes place in a Trial, the Prisoner must be discharged, and he remains exactly in the same situation as before the commencement of these illegal Proceedings. The same Charge may therefore be again preferred against the Prisoner, and in this case he cannot plead a former Acquittal or Conviction, in bar of his impending trial.

XVII. A Prisoner cannot plead, in bar of trial, that he has not been furnished with a Copy of the Charges, or that the Copy furnished him differs from those on which he has been arraigned. Because, though it is customary to furnish him with a correct Copy, it is not legally necessary.

GENERAL COURTS-MARTIAL.

XVIII. No proceedings on trials by Courts-Martial are to be held but betwixt the hours of six in the morning and four in the afternoon, except in cases which require an immediate example.

XIX. The least number of Members of which a European General Court Martial in the Queen's or Company's Service can legally consist is thirteen, unless holden out of Her Majesty's Dominions or the possessions or territories under the Government of the East India Company when it may be composed of not less than five. Native General Courts Martial, if holden within the Company's territories, for the trial of a Commissioned Officer, or to be competent to award Death or Transportation to a Non-Commissioned Officer or Private must consist of thirteen. In ordinary cases in the two latter ranks the Court may consist of nine. In places out of the Company's territories a Native General Court Martial may consist of not less than seven. But in all practicable cases more than the legal number ought to be in the first instance appointed. Whenever a Court Martial becomes reduced below the legal specified number, an adjournment must take place and the circumstance be reported to the convening authority.

XX. If the President of a General Court-Martial, consisting of more Members than the legal number, be from any cause unable to attend the Court, a Warrant may be issued appointing the next senior Member, (if of competent rank) President; and the trial proceeds without interruption.

XXI. Whenever a Member is prevented from attending a Court-Martial, the cause must be duly certified, and that Member cannot again resume his Seat.

XXII. No act can be legally performed by a part only of a Court-Martial.

XXIII. The day and place of Meeting of a General Court-Martial having been previously published in Station Orders, the Officers appointed as Members, and Witnesses must attend accordingly. The Judge Advocate then calls over the names of the Members, and they arrange themselves to the right and left of the President, according to their seniority in the Army.

XXIV. The Prisoner is then called into Court, and although until this period he may have been in close confinement, or even in irons, he must appear there unfettered and without bonds, unless when there is danger of escape or rescue.

XXV. All Members at a Court-Martial, of whatever number it may consist, must be sworn in (or at Native Trials, make an affirmation) and vote and give their opinions.

XXVI. Previously to the prescribed oath being taken, or affirmation made by the Members, both the Prosecutor and Prisoner have the right of challenging them. If any objections be made to the President, they must be fully recorded, and the Court adjourned till the matter is decided on by the authority under whose Warrant the Court is assembled. The Judge Advocate cannot be objected to.

XXVII. Peremptory Challenges are not allowed at a General Court-Martial, and the Party must therefore assign his cause of Challenge, which is to be regularly entered on the proceedings. The Member objected to, then withdraws, and the Court being closed, deliberate and decide on the validity of the Challenge.

XXVIII. Sufficient causes of Challenge are—the expression of an Opinion relative to the subject to be investigated;—the having been Member of a Court of Enquiry which gave an Opinion;—the having been Member of a General Court Martial in which the circumstances to be investigated, had been discussed, either principally, collaterally, or incidentally;—Prejudice and Malice.

XXIX. In all cases, in which more Prisoners than one are arraigned upon different Charges, and tried by the same Court Martial, the Members are liable to be challenged,

and the Court is to be re-sworn at the commencement of each Trial, and the Proceedings are to be made up separately, and signed, as if each Prisoner had been tried by a distinct Court Martial.

XXX. The foregoing rule applies only to Courts-Martial holden in Her Majesty's and the Native Branch of the Honorable Company's Armies. Agreeably to the terms of the oath prescribed for Members, by the Mutiny Act and Articles of War for the Hon'ble Company's European Troops, when more than one Prisoner is to be tried, the Court is to be sworn for the whole of the cases at the commencement of the first, in the presence of all who are to be arraigned. The Proceedings to be afterwards separately and distinctly conducted and made up, and the Members are liable to be challenged by the respective Prisoners.

XXXI. On the arraignment of a Prisoner, he must plead simply either Guilty, or Not Guilty; for at this stage of the trial he cannot enter into any explanation or exculpation of his conduct, but must confine himself to the mere confession of his Guilt, or to the simple and unqualified denial of the Offence laid to his charge.

XXXII. But whatever may be the Prisoner's conduct or reply, on arraignment, whether he pleads Guilty, or stands mute, and it be determined by the Court to be from obduracy or malice, the Prosecutor must adduce his Evidence, and support the Prosecution in the same manner as if the Prisoner had pleaded Not Guilty.

XXXIII. As the Queen is the Prosecutor of all Military Offences, it is the duty of the Judge Advocate to prosecute in Her Majesty's Name, all Persons who may be brought before a General Court-Martial. But it is, at the same time, the established practice of the Army, that the Person, if an Officer, who either is from his situation the best acquainted with the circumstances to be investigated, or who has individually suffered an aggression or injury from the Prisoner to be tried, shall sustain in Court jointly with the Judge Advocate, the character of Prosecutor, and as such, shall conduct of himself the whole of the Prosecution.

XXXIV. But if the Person bringing forward an accusation against any person in the Army, is not himself an Officer either in the Naval or Military Service, he cannot appear in Court as the Prosecutor, but merely as an Informer; and in that case the Judge Advocate conducts the Prosecution.

XXXV. The Prosecutor and Prisoner on requesting it, are to be allowed the assistance either of a Friend or of a professional Gentleman. But no Person is on any account to be permitted to address the Court, or to interfere in any manner with its Proceedings, except the Parties themselves.

XXXVI. When Officers or Non-Commissioned Officers confine any Soldiers or Sepoys; they are on no pretence to neglect attending the Court-Martial to prosecute, and to have all the Evidences ready to prove the Charge; but should it so happen that the Prosecutor or Evidences do not attend, the Court-Martial is never, for that reason, to acquit any Prisoner, but to remit him back to confinement, when the cause of such neglect in the Prosecutor and Evidences will be particularly inquired into.

XXXVII. All preliminary Forms having been duly gone through, the regular course of a Trial is as follows:—

XXXVIII. The Prosecutor, if he thinks any opening of his case necessary, first addresses the Court, either verbally or by reading a written statement, and this Address ought to be delivered previously to his being sworn, in case of his being also examined as a Witness. But this mode ought to be restricted to addresses in which the mention of a few facts are unavoidable, to make the statement understood. If all that the Prosecutor has to state bears wholly or principally on the case, he ought to be previously sworn and not permitted to read his statement.

XXXIX. This opening Address ought to be confined solely to such remarks, as tend to elucidate either the origin or the nature of the Charges, and to explain the manner in which they are to be substantiated: and it ought never to be made the vehicle of invective against the Prisoner, or the means of exciting a prejudice against him in the minds of the Court.

XL. The Prosecutor then calls his Witnesses, and produces his written Evidence.

XLI. In adducing this evidence, the Prosecutor must not be allowed to aggravate the guilt of the Prisoner, by examining into Facts unconnected with the specific Offences alleged in the Charge. But he must confine his proof to such circumstances only, as clearly tend to convict the Prisoner of the particular Accusation preferred against him; and no matter, not put in issue by the Charge, can be received by the Court, which would implicate the Prisoner in a new or distinct Offence, or in a greater degree or extent of guilt than appears in the Charge on which he has been arraigned.

XLII. Nor can the Prosecutor adduce at this stage of the trial, any evidence with respect to the Prisoner's Character, except so far as it is put in issue by the Charge.

XLIII. The Prosecutor, is not to be allowed, as a part of the case for the Prosecution, to adduce testimony criminating the Prisoner's general character, or to allude to anterior offences or improprieties of which he may be suspected.

XLIV. The Prosecutor must, during the prosecution, and before the Prisoner comes on his Defence, produce all the evidence he has to support the Charge; and after the Prosecution has been closed, he shall not be permitted to adduce any further evidence in proof of the specific facts alleged in the Charge.

XLV. The Prosecution being closed, the Prisoner then enters on his Defence, and may either address the Court first, and then adduce his evidence, or defer his address until the whole of his exculpatory proof has been laid before the Court.

XLVI. In conducting his Defence, a Prisoner is allowed every facility of proving his innocence, or of extenuating the culpability of which he is accused. He is therefore, at liberty to bring forward and establish by evidence, every circumstance which, in his opinion, tends to palliate his Conduct, or to refute entirely the Charge preferred against him. He may even vindicate himself, by throwing blame or criminality on others who are no Parties to the trial, as no justification can be more complete than for a Prisoner to prove, that he was compelled to commit the alleged offence, or that the act imputed to him was in reality committed by others.

XLVII. But a Court-Martial ought never to allow a Prisoner to implicate the characters of Persons not present to defend themselves, unless he previously satisfies them, that such proof is essential to his Justification. Whenever, therefore, it is evident that the Prisoner, in impeaching the characters of others, is proceeding on vague and ill-founded suppositions, that he is clearly actuated by resentment, and not by a desire to exculpate his own conduct, the Court ought immediately to reject all such evidence, as neither tending to extenuation nor exculpation.

XLVIII. In drawing up their written Addresses to the Court, Prisoners ought always to recollect, that unwarranted recrimination on the Prosecutor, illiberal reflections on his Witnesses, and most particularly the impeachment of the character of any Person not a Party to the trial, when unnecessary and irrelevant, will ever meet with the most marked disapprobation of the Commander in Chief, and will always prevent him from extending Lenity to an Officer who has recourse to such a mode of Defence.

XLIX. In all cases where a Prisoner produces evidence in his Defence, a Prosecutor has a right to reply, but he cannot adduce any fresh evidence, unless new matter has been introduced on the Defence, in which case he is allowed to controvert this new matter, by evidence.

L. When the Prisoner has not adduced evidence on his defence, it remains in the discretion of the Court to determine, whether the Prosecutor shall be permitted to reply or not. In deciding on which point, no better rule can be prescribed for its guidance, than that a Reply should be permitted whenever the Defence contains any assertions, or any matter on which the Prosecutor has not previously had an opportunity of addressing the Court; for it is equally impossible for the Court, as for the approving Officer, to do impartial Justice, unless the whole of the case of each party is fairly brought before them.

LI. A Rejoinder is not a matter of right, and should never be permitted by a Court-Martial, except when evidence has been adduced on the Reply.

LII. All persons, of whatever Religion or Country, that have the use of their reason, are to be received and examined as Witnesses, except such as are infamous, or are interested in the Cause.

LIII. Infamy, arises from a Person having been convicted of certain Crimes and Misdemeanors, and Judgment passed on him in consequence. But to render him incompetent as a Witness, no proof of such conviction can be received, except a copy of the Record itself. No conviction for a Military offence renders a witness incompetent.

LIV. Interest in the cause, arises from a person deriving a certain and immediate Gain, or incurring a certain and immediate Loss from the testimony which he might give. A contingent, or barely possible Gain, or Loss, does not render him incompetent.

LV. A Person, therefore, is rejected on account of Interest, if he is either a party in a similar Cause, or is liable to Prosecution on the same grounds, or for the same Offence.

LVI. But an Accomplice, or *Particeps Criminis*, is a competent Witness against the persons who were his associates in the commission of an Offence.

LVII. Parties to a trial being allowed to support their Witnesses, Money received *bonâ fide* for that purpose, does not render the Witness incompetent.

LVIII. It is not only allowable for either Party to ascertain, by previous enquiry, the evidence which Persons may have in their power to give in his favor, but it is also his duty, in order to prevent the time of the Court from being wasted by an examination of Witnesses, unacquainted with the circumstances of the case.

LIX. Such communications, therefore, do not in themselves affect the credibility or competency of a Witness. But the opposite Party and the Court are at liberty to examine the Witness, respecting the nature of any communication on the subject of the charges under investigation, which he may have had with the Party producing him; and should it, at any stage of the trial, appear from such examination, that he has an interest in the evidence which he is giving, the Court shall immediately reject his testimony. Should, also, the circumstances appear to render the Witness incompetent, still if the Party producing him has used any means to create an improper bias in his mind, or to suggest in any manner the evidence to be given, the testimony of such a Witness will be entitled to little or no credit. And any communications betwixt Witnesses in respect to the evidence they are about to give in the same case, are highly improper and cannot fail to make an unfavorable impression on the Court and cause their testimony to be disregarded.

LX. According to the English law, Husbands and Wives cannot be Witnesses for or against each other in any action in which one of the married persons is a party, except in cases of personal violence of the one towards the other. But every relation of kindred as well as servants are competent Witnesses. No degree of relationship renders a Witness incompetent at Native Trials.

LXI: Counsels and Attornies, also, cannot be called upon to give evidence which would disclose the secrets, which their Clients may have confided to them for the purpose of enabling them to conduct a cause.

LXII. The admissibility of Children, as Witnesses, is not regulated by their age, but by their apparent sense and understanding. Children, therefore, of any age may be examined on Oath, if capable of distinguishing between good and evil; but they cannot in any case be examined without Oath.

LXIII. If a Child is unfit to be sworn, it follows as a necessary consequence, that any account which it may have given to others, is not to be admitted.

LXIV. The exception to a Witness ought, in strictness, to be made before he is sworn in. But it is also competent for a Court-Martial, at whatever stage of a trial the incompetency of a Witness appears, to arrest his evidence, and to discharge his testimony from their minds.

LXV. The Prosecutor and Prisoner are both allowed to take exceptions to the competency of a Witness, which are to be stated in open Court, and recorded on the Proceedings of the Trial; after which the Court decide on their validity.

LXVI. When no exception is made to a Witness, he is to be duly sworn, or make solemn affirmation, and is then first examined in chief by the Party who produces him; the opposite Party next cross-examines him; and in case of new matter being introduced on the cross-examination, the Party calling him re-examines into that matter; and then the Court put such questions to the Witness, as they may think necessary.

LXVII. It is essential to the regularity of the proceedings of a Court-Martial, that this mode of examining Witnesses should be strictly adhered to. For whenever the Parties, or the Court, put questions backwards and forwards, first one and then the other, it confuses the Witness, perplexes the Case, and most materially incapacitates the Party producing the Witness from deriving that benefit from his testimony, which he might otherwise have done.

LXVIII. When Witnesses are called to Character, they must be duly sworn, and they cannot be cross-examined; nor can any examination take place into particular Facts. But the Witness may be called upon to assign his reasons for the Character which he has given in evidence.

LXIX. The Charges before the Court are not to be read to the Witnesses.

LXX. When the Trial is finished, the Court is closed, and proceeds to deliberate on its Verdict and Sentence.

LXXI. Members of Courts-Martial ought then to bear in mind, that they have two distinct duties to perform;—the one, that of Jurors; and the other, that of Judges.

LXXII. In the first of these Capacities, they are bound to find a Verdict according to the evidence which has been produced before them. But this Verdict may either be general, declaring the Prisoner guilty or not guilty of the whole Charge preferred against him, or it may be particular, finding that such and such allegations have been proved, and acquitting the Prisoner of the others. The Court may also in cases, wherein the Offence admits of gradations, acquit of the degree charged, and find the Prisoner guilty in a lesser degree. But they must in all cases exhaust the Charge, and declare their Opinion on each particular allegation which may be contained in it.

LXXIII. At Trials of Non-Commissioned Officers and Privates in Her Majesty's Service and the European branch of the Company's Army, if the Prisoner be found Guilty, the Court is to be again opened for the purpose of receiving evidence of previous convictions, of which notice is to be given to the Prisoner 24 hours before the assembly of the Court. At the same stage of the Trial, evidence is to be taken in respect to the general Character of the Prisoner, and in all cases a Medical Certificate of his state of health and capability of undergoing different descriptions of punishment is to be laid before the Court and attached to the Proceedings.

LXXIV. The Articles of War on the above point have not been sufficiently attended to, and a practice has grown up of making the Members of a Court Martial acquainted with the previous bad Character of a Prisoner antecedent to his Trial, by noticing the record of his convictions immediately subsequent to his arraignment. This is a practice as inconsistent with justice, as it is at variance with the Articles of War.

LXXV. In their other Capacity, if the Verdict be Guilty, the Members of a Court-Martial, the minority, even if they have acquitted the Prisoner, as well as the majority, are bound by their Oath to duly administer Justice, by awarding such a Punishment as is proportionate to the degree of Guilt of which the Prisoner has been convicted. No mitigating circumstances whatever ought then to influence their Judgment, and their attention ought solely to be directed to the nature of the Offence, to the custom of War in the like cases, and to the effect which their Sentence may produce towards maintaining the Discipline of the Army.

LXXVI. However desirable it may be to leave to Courts-Martial the punishment of delinquencies, yet when a Sentence is passed quite inadequate to the crime of which the Prisoner is found Guilty, and the Court obstinately persist, on revision, in adhering to their original award, the case will be brought under the notice of the proper authority for the removal of the transgressor from the Service, that he be not suffered to continue in the Army to set a pernicious example to others by reprehensible habits and disgraceful conduct.

LXXVII. If mitigating circumstances have appeared during the Trial, which could not be taken into consideration in determining the degree of Guilt found by their Verdict, the Court can only avail themselves of such circumstances as adequate grounds for recommending the Prisoner to Mercy.

LXXVIII. No Recommendation to Mercy is to be written in the body of the Sentence, but it is to be inserted (on the same page, if possible,) below the signatures of the President and Judge Advocate, and to bear the signature of the President alone.

LXXIX. In cases where a Prisoner rests his Defence on the plea of Intoxication or Insanity, it is to be remarked that the Law considers voluntary contracted madness, by Intoxication to be aggravation, and not an excuse for any criminal misbehaviour. Such a plea ought, therefore, to have no influence on the Sentence awarded by the Court, though it might in certain cases induce them to recommend the Prisoner to Mercy.

LXXX. With regard to Insanity, the Law holds that if there be only a partial degree of insanity, mixed with a partial degree of reason, not a full and complete use of reason, but a competent use of it, sufficient to have restrained those passions which produced the crime, if there be thought any design,—a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the Offence proved, the Judgment of the Law must take place. It is also to be remarked, that on all Acquittals, on account of Insanity, the Court must find specially whether the Prisoner was insane when he committed the Crime, and must declare in their Finding that he was acquitted on this account.

LXXXI. In all cases wherein the offence of which a Prisoner is convicted, comes under any particular Article of War, the Court can award no other Punishment than the one prescribed in such Article.

LXXXII. When, however, the Punishment is left to the discretion of the Court, it is to be understood that such discretion must be regulated by the custom of War in the like cases; and Courts-Martial ought therefore to award no unusual Punishment, except when the circumstances of a particular case may imperiously require it.

LXXXIII. The usual penalties to which an Officer may be adjudged both in the Queen's and Company's Service are, Cashiering or Dismissal. In Her Majesty's Service also reduction of rank, but not suspension from rank and pay, may be awarded. In the Company's Army either suspension or reduction in rank may be adjudged.

LXXXIV. It is to be observed, that when an Officer is brought to trial for behaving in a scandalous, infamous manner, such as is unbecoming the character of an Officer and a Gentleman, the Court must find him either Guilty or Not Guilty of the Charge. For these words constitute but one single Offence, and it is therefore not competent for the Court to divide them, and to declare the Prisoner guilty to a certain extent only.

LXXXV. The usual punishment to a Warrant Officer is reduction to the Ranks, or to an intermediate inferior situation (if he has been originally enlisted as a Soldier and continued in the Service till his appointment by Warrant) or suspension in the rank he holds. But he cannot be adjudged to corporal punishment. A Non-Commissioned Officer must be reduced to the rank and pay of a Private, and further penalties may be added in aggravated cases of delinquency.

LXXXVI. The sentencing a Warrant or Non-Commissioned Officer to be reprimanded, is both unusual and inefficacious as a punishment, and therefore such a Sentence ought never to be awarded by a Court-Martial.

LXXXVII. The usual punishments for a Soldier in Her Majesty's or the Hon'ble Company's European Army are flogging and different descriptions of imprisonment and other penalties as enumerated in the Mutiny Acts and Articles of War. The award of the first of these punishments is restricted by the Regulations of the former service to the

* 1st. Mutiny, Insubordination, and violence; or using or offering violence to Superior Officers. 2d. Drunkenness on duty. 3rd. Sale of, or making away with Arms, Accoutrements or Necessaries, stealing from Comrade; or other disgraceful conduct.

offences specified in the margin,* and the same restriction is to be considered applicable to the latter. The respective Mutiny Acts and Articles of War also restrict the awards of Corporal punishment by a General Court-Martial to 200 lashes: by a District or Garrison Court-Martial to 150 Lashes, and a Regimental

Court Martial to 100 Lashes. Sentences of solitary imprisonment by General or District Courts-Martial are to be specified in lunar months, and in ordinary cases, two or three months solitary confinement, or three or four months confinement with hard labour may be considered adequate, and under no circumstance can a sentence exceeding six or eight months be awarded with advantage. In Sentences including solitary imprisonment, the month or months, or portions of month adjudged to be solitary are to be specified, and to be in conformity to the restrictive provisions on that point. The period of Imprisonment is to be reckoned from the date of the Prisoner being placed in the Cell or place of confinement, after the promulgation of the sentence.

LXXXVIII. In Sentences of imprisonment passed on European Soldiers of Her Majesty's and the Honorable Company's Service it is to be specified that the confinement is to be in such place as the Officer Commanding the Regiment or Corps to which the offender belongs or is attached may appoint, who in deciding on this point will, in communication with the Officer Commanding the Station, be guided by circumstances tending to the efficiency of the Sentence and existing contingencies.

LXXXIX. In the Native Army corporal punishment cannot be awarded. But imprisonment either with or without hard labour and forfeiture of increased Pay arising out of length of Service may be adjudged. The last penalty is however, subject to the confirmation of the Commander in Chief. Extra drill or duty, ought never to be awarded. The period of imprisonment adjudged to Native Soldiers commences from the date of the original Sentence, and a confirmed award of hard labour for any period, or of simple imprisonment exceeding six months, involves discharge from the Service. No specification of Lunar or Calendar months to be inserted in sentences of Native Court Martial but they are to be calculated in the latter when carried into effect under Military controul.

XC. In Her Majesty's and the Hon'ble Company's European Army, Non-Commissioned Officers and Privates may be adjudged to be transported for any Military offence for which death is awardable. Transportation cannot be awarded in the Native Army for any Military offence, except embezzlement or fraudulent misapplication of Military Stores or any sort of public property applied to Military purposes. No specification of, or reference to time and place to be inserted in Sentences of transportation.

XCI. In all cases in which an Officer or Soldier is tried by a General Court Martial under the 102d Art. of War for Her Majesty's Forces, or the 2d Sec. of the Mutiny Act for the Company's European Troops, and of the 92d Art. of War thereto annexed, the Courts in passing Sentence are to be regulated by the provisions of these respective enactments. In all Trials of Natives connected with the Army, by General Courts Martial for civil offences, the Court in receiving evidence and passing sentence is to be guided by the Regulations and Acts in force for the ordinary local Courts of Judicature.

XCI. If a Court Martial should be of opinion that the Prisoner should be discharged from the Service with ignomy, a recommendation to that effect ought to be subjoined to the sentence, and not form part of it. Recommendations of the above nature to be confined to cases of a disgraceful nature enumerated in the Articles of War for the European Branches of the Service, or to instances of shameful delinquency occurring in the Native Army.

XCIII. The discharge of Soldiers belonging to Her Majesty's and the European branch of the Hon'ble Company's Service requires the confirmation of His Excellency the Commander in Chief. In cases of Native Soldiers tried and convicted by Minor Courts Martial, the Officer Commanding the Division is vested with the power of sanctioning the discharge of the Prisoner.

XCIV. It is to be observed that two punishments, of a distinct nature and degree from each other, cannot be inflicted for the same offence, except in cases wherein such a power has been conveyed to Courts Martial by some express provision of the Mutiny Act.

XCIV. It is also inexpedient that Courts-Martial should award a Punishment, so excessive in amount, as to render it impossible for the confirming authority to sanction it with any regard to the good of the public Service.

XCVI. In drawing up the Findings and Sentences of Courts-Martial, the utmost precision is to be observed in specifying how far the Prisoner is Guilty, or Not Guilty of each Charge, or Instance of Charge; and in specifying the exact nature and degree of punishment which the Court has awarded.

XCVII. Whenever the proceedings of a Court-Martial are ordered to be revised, it is illegal for the Court to call and examine fresh Witnesses. The Revision is to be confined entirely to a re-consideration of the matter already recorded on the Proceedings.

XCVIII. It is to be particularly observed, that however excusable an adherence, from conscientious motives, to Finding and Sentence once pronounced, may be; yet where error in judgment, arising from a misconception of the Law, or of the custom of War in the like cases, is brought to the notice of a Court-Martial, supported by respectable authority, their perseverance in error is a dereliction of Duty, and a baneful Example.

XCIX. A Court Martial, after it is once assembled and duly constituted, is not subject to the control of any superior authority in the exercise of the functions entrusted to it. But in cases of doubt a Court may find it necessary to refer to the convening or superior authority for the requisite information: and in any reply which may be given on such occasions, as well as any considerations which may be laid before it, ought always to be received with every deference and attention. It is certainly not absolutely incumbent on the Court to be guided by them, but it ought to be slow in acting contrary to such sentiments and opinions.

G. O. C. 12d
March 1832.

C. The Proceedings of all General Courts-Martial, to be transmitted, sealed, by the Deputy or Officiating Judge Advocate, to the Judge Advocate General at the Presidency, by whom they will be laid before the Commander in Chief.

G. O. C. 9th
June 1823.

CI. The Proceedings of all General Courts Martial held on Officers and Soldiers of Her Majesty's Regiments, are to be prepared in duplicate; and the latter, duly certified by the President, is to be transmitted by him at the same time with the original Proceedings to the Commander in Chief, in the usual manner.

G. O. C. 20th
July 1833.

CII. The Commander in Chief's Decisions and Orders upon the Proceedings of Courts-Martial, will continue to be received and communicated by the Adjutant General.

CIII. The Proceedings of all Courts-Martial, or Courts of Enquiry, to be written on Foolscap Paper.

G. O. 7th July
1784.

CIV. When Copies of Courts-Martial are required by the Prisoner or Prosecutor, they will be furnished by the Judge Advocate General at fifty Rupees each, whatever the magnitude of them.*

G. G. O. 28th
Jan. 1789.

CV. By the provisions of the Mutiny Act for the Company's European Troops, a person tried by a General Court Martial holden on the continent of India may demand a copy of his trial three months after conclusion of the same, and after six months if beyond seas—provided that such demand be made within three years from the date of the approval or other final decision upon the proceedings. Copies of Native General Courts Martial may be obtained six months after trial, if the Court be holden within the Company's Territories, and after twelve months if beyond seas.

* N. B. The original Proceedings of Courts-Martial held on Officers in H. M. Service, are forwarded to the Judge Advocate General, London, from whence a copy can only be obtained.

MINOR COURTS MARTIAL.

CVI. The rules laid down for the guidance of General Courts Martial apply in all material points to the practice of those of minor constitution and power.

CXVII. District or Garrison Courts Martial in Her Majesty's Service, must consist of at least Seven Members: and in the European branch of the Company's Army of Five. The President in both Services cannot be under the rank of Captain. Those Courts are assembled by Field Officers Commanding Garrisons and Districts, holding warrants to that effect; but the Sentence cannot be confirmed by any Officer under the rank of Lieutenant Colonel.

CVIII. The powers of a District Court-Martial, in the extent of the punishments within its competency to award, being nearly the same as those vested in a general one, and assistance to the Prisoner being always allowed, when asked for, at the latter, it should also be admitted, if desired, at the former.

G. G. O. 5th
July 1832.

CIX. On all occasions of the assembly of District Courts Martial the Officer of the Adjutant General's Department will indent on the Commissary for such Stationery as may be necessary, and if any remains, it is to be taken care of until it may be required on any future occasion.

CX. The Warrant empowering the convention of District and Garrison Courts Martial, and the carrying into execution, mitigating, or remitting Sentences passed by such Courts, does not authorize the delegation of this power to another Officer, but is solely vested in him to whom it is addressed, and these acts must not be confounded with the carrying a Sentence into execution, *as regards time and place*, for the time and place of execution are by law no part of the judgment.

CXI. The Proceedings of District Courts-Martial holden under the 90th Article of War for the Company's European Troops are to be forwarded for the confirmation of His Excellency the Commander in Chief.

CXII. Regimental Courts-Martial must, in both the Queen's and Company's Service consist of Five, or at least Three Members. The President cannot be under the Rank of Captain, and consequently no Officer under that Rank has the power of convening them.

CXIII. Under the Provisions of the Articles of War for Her Majesty's and the Hon'ble Company's European Troops, Detachment Courts-Martial (constituted as, and possessing the powers of Regimental ones) composed of Officers of different Corps may be held (without any other Warrant than those articles) by the Senior Officer in Command of the District, Station or Garrison &c. provided he be not under the Rank of Field Officer; or in case of embarkation on board any Transport or Merchant Vessel, Courts of the same description may be held by the appointment of the Senior Officer on board if of the Rank of Captain—with another Captain to sit as President.

CXIV. In the Company's Native Army Minor Courts-Martial of the several foregoing designations (consisting of Five or Three Members) may be held by order of a European Commissioned Officer of any Rank, having Officers to Superintend the Proceedings and act as Interpreter.

CXV. There being no Oath prescribed by the Articles of War for the Native Troops to be taken by the Officer Superintending the Proceedings of Minor Courts-Martial in that Branch of the Army he is not to be sworn: and as his duties are of the nature of those of a Judge Advocate, he cannot act as Interpreter.

G. O. 7th Sep-
tember 1786.

CXVI. When Minor Courts-Martial are appointed, all Evidences for, or against the Prisoners are to attend.

CXVII. If any who do not receive the daily Orders, are Evidences, the Staff Officer to take care that they be informed, when the Court-Martial is held; and also that the Prisoners may know when they are to be tried, that they may have time to call Evidences for their defence.

G. O. C. C. I.
27th Jan. 1834.

CXVIII. The Remarks by General, or other Officers Commanding Divisions, or Field Forces, on all Courts-Martial inferior to General ones are invariably to be published in Station, Detachment, or Regimental Orders, as the particular cases may require.

G. O. C. 20th
June 1837.

CXIX. With the view of preventing illegal trials by Minor Military Tribunals, all charges framed under the 8th Article of the 7th Section of the Articles of War for the Native Troops, vizt. a Sentinel "sleeping on his Post, or quitting it before he is regularly relieved"—are to be submitted for investigation by a General Court-Martial, under the provisions of the 2nd Article of the 12th Section of the same Code.

CXX. It is also to be observed, that all offences committed by Camp Followers of a nature and degree beyond the jurisdiction and cognizance of Superintendents of Bazaars are to be tried as set forth in the Legislative Acts Nos. XXIII of 1839 and XXVIII of 1841.

G. O. G. 15th
September 1838.

CXXI. In submitting the Proceedings of Minor Courts-Martial for the consideration and disposal of superior authority, no intermediate approval or remission is to be attached. Whatever remarks the respective intervening authorities may consider necessary, are to be made by letter.

CXXII. The cases of European Soldiers recommended to be discharged with ignominy form an exception to the foregoing rule.

ATTENDANCE OF WITNESSES.

G. G. O. 6th
Dec. 1805.

CXXIII. Whenever Officers are called from a distance, either as Members, or summoned as Witnesses, for General Courts-Martial, or on Trials, in Her Majesty's Supreme Court of Judicature, they shall be allowed to draw the full Field Allowances of their rank, from the date of the Order directing them to repair to whatever place the Court may be ordered to

assemble at, and to continue to receive the said allowances, until they return to their respective Corps or Stations.

CXXIV. Officers in command of Out-Stations will be held responsible, that no delay occurs in ordering Officers from their command, who may be required as Members or Witnesses at Courts-Martial, or on Trials in Her Majesty's Supreme Court of Judicature, to proceed to the Station where the Court is ordered to assemble, reporting the day of their departure to the Adjutant General. They are to return to their Corps or Stations, immediately on their attendance being dispensed with by competent authority.

CXXV. It appearing that Persons have often been summoned to give evidence in Courts-Martial, at the requisitions of the Prisoners, whose evidence has not been material to the Defence, and whose absence from their Stations has been detrimental to the Service; and it being in practice in all Courts of Justice, that the Persons at whose requisitions Witnesses are summoned, should defray the expenses of their attendance:—the Charges of all Persons who may in future be summoned at the requisition of the Prisoners, are to be paid by them, except in cases wherein it shall plainly appear that the Evidence has not been wantonly and unnecessarily called upon.

G. G. O. 4th
Sept. 1806.

CXXVI. Prisoners in summoning Evidence on their Defence, are not in any instance to be exposed to an expense beyond what is allowed to Persons summoned to Courts-Martial on the public account.

CXXVII. Persons hereafter summoned by Prisoners, will draw the public Allowance in a similar manner with other Evidences; and it will be subsequently determined whether or not the expense incurred, shall be brought against the Individuals at whose instance citations might have been given.

CXXVIII. In cases of the attendance of Native Witnesses being required at Courts-Martial, they not being in the Military Service, a sufficient sum is to be drawn for them to defray such reasonable expenses as they may incur thereby.

G. L. 8th Feb.
1825.

CXXIX. The Rule which provides for the payment of expenses incurred by Natives not in the Military Service, on occasion of their being summoned from a distance as Evidences on Court-Martial, should equally apply to European Witnesses.

G. L. 11th
Nov. 1829.

CXXX. In all such cases the charges should pass through the prescribed channel for all others of a Contingent nature, and the Judge Advocate and his Deputies should furnish the Claimants with Certificates, specifying the extent of Compensation which it may be deemed equitable to award them, together with the place they came from, for the purpose of being annexed to the Bill when presented to the Pay Office. Bills of this nature, however, will not be discharged until they have passed Audit.

JUDGE ADVOCATES AND INTERPRETERS.

CXXXI. Allowance for Officers officiating as Judge Advocates at General Courts-Martial is Seven Rupees per day, for the days on which the Courts may actually sit.

G. G. O. 20th
Feb. 1834.

CXXXII. It is declared to be contrary to the invariable principles of justice that the officiating Judge Advocate conducting a Trial should be the Interpreter of the evidence in support or refutation of the charges.

CXXXIII. At all Native Courts-Martial, the Interpreter shall remain in Court, whenever it is closed, in order to assist the Judge Advocate or Superintending Officer in correctly and faithfully ascertaining the Votes and Opinions of the different Members, and he is also to countersign the Proceedings.

MISCELLANEOUS.

CXXXIV. Act No. XXIII. of 1839.

Passed by the Hon'ble the President of the Council of India in Council on the 23rd September, 1839.

An Act for authorizing Sentences of Imprisonment with or without Hard Labor by Courts-Martial in certain cases.

It is hereby declared and enacted, that in all cases in which by a General Order of the Governor General of India in Council, dated the 24th of February in the year of our Lord 1835, it is made competent for Courts-Martial to sentence Soldiers of the Native Army in the service of the East India Company, to the punishment of dismissal from such service, it is, and shall be lawful to sentence such Soldiers to be imprisoned with or without hard labor, for any period not exceeding two years, if the sentence be pronounced by a General Court-Martial, or not exceeding one year, if the sentence be pronounced by a Garrison or Line Court-Martial, or not exceeding six months if the sentence be pronounced by a Regimental or Detachment Court-Martial. And every Soldier so sentenced to imprisonment with hard labor for any period whatever, or to imprisonment without hard labor for any period exceeding six months shall, after confirmation of his sentence be dismissed from such service; provided always, that all sentences under this Act pronounced by any Court-Martial inferior to a General Court-Martial, shall require the confirmation of the General, or other Officer Commanding the Division or Field Force to which the person convicted belongs.

CXXXV. Act No. II. of 1840.

Passed by the Hon'ble the President of the Council of India in Council on the 10th February, 1840.

An Act for regulating the execution of Sentences of Imprisonment passed by Courts-Martial in certain cases.

It is hereby declared and enacted, that whenever, under Act No. XXIII. of 1839, any Sentence of a Court-Martial shall adjudge imprisonment, or imprisonment with labor, for

any offence, it shall be the duty [of every Judge, Magistrate, Sheriff, or other Officer in charge of any Gaol, to give effect to such Sentence, on the offender being delivered into his custody, and on being furnished with a copy of the Sentence by the Officer Commanding the Division, Garrison, Regiment or Detachment, as the case may be, to which the offender belongs.

CXXXVI.

ACT No. XXVIII. of 1841.

Passed by the Right Hon'ble the Governor General of India in Council on the 15th November 1841.

An Act for extending Act No. XXIII. of 1839, to Camp Followers.

I. It is hereby enacted, that in cases in which an offender, being a Soldier, is punishable under Act XXIII of 1839.

II. Any offender amenable to any Articles of War for the East India Company's Native Forces, not being a Commissioned Officer, shall be punishable according to that Act, as well as otherwise according to law, and Act No. II of 1840, shall be applicable to offenders imprisoned under this Act.

G. O. C. 19th
Nov. 1838.

CXXXVII. Sentences of imprisonment by Native Courts Martial, which require to be carried into effect under the provisions of Section VI. Clause 1st, and Section XIV. of Regulation XXII. A. D. 1827, and Act No. II of 1840 are to be certified to the civil authority receiving the Prisoner, in the following Form by the Commanding Officer of the District.

To _____ Esq.

(Here insert the designation of the authority.)

The undermentioned Prisoner is herewith delivered to your custody, to undergo the sentence herein stated, the period of which is to be reckoned from the date of original sentence.

Prisoner's name.	Office of which convicted.	Sentence.	Date of original Sentence.

CXXXVIII.

ACT No. V. OF 1840.

Passed by the Right Hon'ble the Governor General of India in Council, on the 24th of February 1840.

An Act concerning the Oaths and Declarations of Hindoos and Mahometans.

I. Whereas, obstruction to justice, and other inconveniences have arisen in consequence of persons of the Hindoo or Mahometan persuasion being compelled to swear by the water of the Ganges, or upon the Koran, or according to other forms which are repugnant to their consciences or feelings.

II. It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes aforesaid, within the territories of the East India Company shall make affirmation to the following effect.

"I solemnly affirm, in the presence of Almighty God, that what I shall state, shall be the truth, the whole truth, and nothing but the truth."

III. And it is hereby enacted, that if any person making such affirmation as aforesaid, shall wilfully and falsely state any matter or thing which if the same had been sworn before the passing of this Act would have amounted to perjury, every such offender shall be subject in all Courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

IV. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second Section of this Act, shall be subject in all Courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

V. And it is hereby provided, that this Act shall not extend to any declaration made under the authority of Act No. XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's Courts of Justice.

CXXXIX. By the provisions of the 43rd Clause of the 3rd and 4th William IV. Chap. 85, it is enacted, that no part of the Mutiny Acts for Her Majesty's and the Company's European Forces shall be repealed, varied, suspended or affected by the Legislative Council made under that Clause.

G. G. O. 12th
June 1823.

CXL. All Persons, the Offspring of an European Parent, whether Father or Mother, and their Descendants, professing the Christian Religion, who are subject to Military Law, shall be tried, when accused of any Offence, by Courts-Martial composed of European Officers.

G. O. 2nd Nov.
1776.

CLXI. Courts-Martial for the trial of Sepoy Officers and Sepoys, shall be composed of Native Officers only.

G. O. 18th
Dec. 1794.

CXLII. The measure of assembling Courts-Martial on a Sunday, is prohibited, except on very urgent occasions; and when an immediate Example is necessary.

G. G. O. 16th
Feb. 1829.

CXLIII. (H. C. L. to S. G. 23rd May, 1827. Para. III.) When our Ecclesiastical Establishment was placed on the footing on which it now stands, it became a necessary arrange-

ment that the Indian Clergy should be submitted to the general superintendence of the Bishop, and rendered subject to the Ecclesiastical Jurisdiction for all offences of Ecclesiastical cognizance; but it was never intended to except this portion of our Servants from the Jurisdiction of the temporal Courts, in the event of their being charged with any offences of a Civil nature, or any Crime against the peace and well-being of Society.

CXLIV. (IV.) We wish it therefore to be distinctly understood, that the Chaplains on our Establishment are amenable to the Ecclesiastical Tribunals for such Offences only as would render the Clergy of the Established Church amenable to the Ecclesiastical Tribunals in England, and for all other Offences they are liable to be tried as all other Europeans are, by the ordinary Tribunals of the Country.

CXLV. (V.) If, however, the Offences should be committed out of the Jurisdiction of the Ordinary Courts, and in places where the rest of the community are subject to Martial Law, in such cases, and in such alone, we deem it right that Chaplains should be subject also to Military Law, for all offences of temporal cognizance.

MILITARY COURTS OF REQUESTS.

CXLVI. The following Rules for the constitution of Military Courts of Requests assembled under the provisions of Act. 3d & 4th, Vic. Cap. 37, Section 54, and for the guidance and disposal of their Proceedings are to be observed.

G. O. C. 1st
April 1835, modified.

CXLVII. In all practicable cases a Field Officer is to be detailed as President of such Courts; and Captains or Subalterns of not less than five years standing as Members.

CXLVIII. The Court having met, the Members and President are duly sworn, in the presence of all the Parties for the several Trials to be entered on, which are to be conducted separately in the following manner.

CXLIX. The Plaintiff and Defendant being both in Court, the Court enquires of the Plaintiff (*not upon Oath*) what the nature of his demand is: and, on this being stated, interrogates the Defendant (*not upon Oath*) as to whether he owns the Debt and acquiesces in the statement of the Plaintiff, or not. This *preliminary* examination of the parties is to be conducted by the Court to such extent as may appear to be desirable: and it is to be remembered, that such declarations as either party may make *against his own interest*, although not upon Oath, are good Evidence against himself.

CL. Should the Defendant acknowledge the Debt, a Decree is then passed and recorded accordingly: and the Court closes its Proceedings on the case.

CLI. Should the Defendant deny the Debt, the Plaintiff is called upon for his Proofs, and his Witnesses being produced, are examined on oath by the Court, subject to cross-examination by the Defendant, and their Evidence recorded.

CLII. The Defendant is then in like manner called upon, and the Evidence of the Witnesses on the Defence, subject to cross-examination by the Plaintiff, is duly recorded.

And be it enacted, that in all places where the said Company's Forces now are, or may be employed, or where any Body of Her Majesty's Force may be serving with the Forces of the said Company, situated beyond the jurisdiction of the Court of Requests established at the Cities of Calcutta, Madras and Bombay respectively, actions of Debt, and all personal actions against Officers, all persons licensed to act as Sutlers to any Corps or Detachments or at any Station or Cantonment, all persons resident within the Limits of a Military Cantonment, or other persons amenable to the Provisions of this Act, shall be cognizable before a Court of Requests composed of Military Officers, and not elsewhere, provided the value in question shall not exceed Four hundred Company's Rupees, and that the Defendant was a person of the above description when the cause of action arose, which Court the Commanding Officer of any Station or Cantonment is hereby authorized and empowered to convene; and the said Court shall in all practicable cases consist of Five Commissioned Officers, and in no instance of less than three, and the President thereof shall in all practicable cases be a Field Officer, and in no case be under the rank of a Captain, and every Member having served Five years as a Commissioned Officer, and the President and Members assisting at any such Court, before any proceedings to be had before it, shall take the following Oath upon the Holy Evangelists, which Oath shall be administered by the President of the Court to the other Member

CLIII. The Court then decides according to the Evidence before it, and the decision is entered upon the record: special attention being given, in the event of finding any Debt or Damages due, to the Provisions of Section LIV. of 3. & 4. Vic. Cap. 37, and to the mode of proceeding therein prescribed.

CLIV. Although neither Party can be sworn, in support of his own cause, *at his own desire*, yet, either Party may be required *by the other* to give answer upon Oath, or may be ordered by the Court so to do. But it is only usual for the Court to resort to such a measure when a Decision is about to be pronounced upon the statements of the Parties only, without Evidence of any kind; or when the Evidence adduced is altogether insufficient and unsatisfactory: in such cases the Court directs such Party to be sworn as it may deem best.

CLV. If either Party having been sworn at the request of the other, make such answer as may be prejudicial to the cause of the adverse Party, such Evidence must nevertheless be received and recorded, and due weight given to it accordingly.

CLVI. If a Party refuse to be sworn when requested by the other Party, or ordered by the Court, such refusal is to be deemed contumacious, and tantamount to a confession against himself, and Judgment

having first taken the Oath, (that is to say.)

" I Swear, that I will duly administer Justice according to the Evidence in the matters that shall be brought before me."

" So help me God."

And every Witness before any such Courts are hereby authorized to administer, or if Native of the East Indies, on Oath or Solemn Declaration, as the circumstances of the case may require; and it shall be competent for such Courts, upon finding any Debt or Damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped and paid over to the Creditor out of any Pay or Public Money which may be coming to the Debtor in the current or any future month, or to be paid by Instalment on sufficient security; and in case the execution shall be awarded generally, the Debt, if not paid forthwith, shall be levied by seizure and public sale of such of the Debtor's goods as may be found within the Camp, Garrison, or Cantonment, under a written order of the Commanding Officer grounded on the Judgment of the Court, and the goods of the Debtor, if found within the limits of the Company, Garrison or Cantonment to which the Debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such Debt or Damages; and if sufficient goods shall not be found within the limits of the Camp, Garrison, or Cantonment, then any public money, or any sum not exceeding the half pay accruing to the Debtor, shall be stopped in liquidation of such Debt or Damage; and if such Debtor shall not receive Pay as an Officer, or from any Public Department, but be a Sutler, Servant, or Follower, he shall be arrested by like order of the Commanding Officer, and imprisoned in some convenient place within the Military Boundaries for the space of two months, unless the Debt be sooner paid.

CLX. No Creditor can be allowed to *divide* his demand against the same Person into several Suits for the purpose of reducing it within the Jurisdiction of a Court of Requests; but if he be willing to limit and restrict his *entire Demand* to the sum of Four Hundred Rupees and to quit Claim to the Surplus of Debt over and above the said sum, then his suit, may be so admitted accordingly.

CLXI. The Statement of the Parties, as well as all Evidence admitted by Military Courts of Requests, are invariably to be *entered on the Record*.

CLXII. The proceedings having been concluded on each particular case, are to be sent to the Commanding Officer, in order to the judgment of the Court being duly carried into effect.

CLXIII. Courts of Requests trying actions of Debt against Native Soldiers and Followers, are to be guided by the following Act.

Act No. XI of 1841.

Passed by the Right Hon'ble the Governor General of India in Council on the 5th July 1841.

An Act for consolidating and amending the Regulations concerning Military Courts of Requests for Native Officers and Soldiers in the Service of the East India Company.

I. It is hereby enacted, that all Regulations and parts of Regulations concerning Military Courts of Requests are repealed; provided always, that nothing in this Act contained shall be hold to alter or affect the jurisdiction of a single Officer duly authorized and appointed under the Rules in force in the Madras and Bombay Presidencies for the trial of small suits in Military Bazaars at Cantonments and Stations occupied by the Troops of those Presidencies respectively, or the trial by Punchayet of suits against Military persons according to the Rules in force under the Madras Presidency.

II. And it is hereby enacted, subject to the aforesaid proviso, that within the Territories of the East India Company, actions of debt and other personal actions against Native Officers, Soldiers and other persons amenable to the Articles of War for the Native Forces in the Military Service of the East India Company, or residing within any Station or Cantonment, and carrying on any trade or business in a Military Bazaar, shall be cognizable before a Military Court and not elsewhere, provided the value in question shall not exceed 200 Rupees, and the defendant was a person of the description abovementioned, when the cause of action arose, and when the suit was instituted. Provided that no suit shall be brought before any Mili-

is to be passed and recorded against him accordingly.

CLVII. One Party having been sworn at the request of the other, or by order of the Court, the other Party is not in *any case* to be sworn. The Plaintiff may, if he pleases, require the Defendant to be sworn in support of the Prosecution, and this precludes the Defendant from making a like demand on the Defence.

CLVIII. A Court of Requests cannot, in any case, decide suits *touching Land or Houses*; neither can it, on any pretence, direct such to be seized, or sold, in satisfaction of its Judgments or Decrees.

CLIX. A Court of Requests is essentially a *Court of Equity and Conscience*; not bound down by the same strictness of rules and form which attaches to the Courts of Law generally; and the Members thereof are to recollect that they are to make such inquiry as may enable them, *according to their conscience*, to do entire Justice to both Parties. A claim for Money due, for instance, might be met by a counterstatement of Damage done by the adverse Party, and the Court would then make inquiry and decide according to the equity of the case. A., being Servant of B., claims Wages due: B., admits that the Wages are due: but states that certain articles, intrusted to the said A., his Servant, of equal or greater value than the Wages due, have been wantonly lost or destroyed by him: the Court would, thereupon, require Evidence, first, as to the *actual intrusting* of the articles in question to A.; and, secondly, as to their *value*, and the *circumstances* under which they were lost or destroyed: and then pronounce Judgment accordingly.

in his absence. And if the decree in any such cases shall be against the Plaintiff, it shall not be competent for him to commence a new suit for the same cause of action.

XI. And it is hereby enacted, that it shall be lawful for the Commanding Officer to whom the proceedings have been transmitted as aforesaid to return the same for revision either by the same or another Military Court of Requests, and in every such case the second decree shall be final, unless for error in points of law; when the same shall be transmitted to the Commander-in-Chief, who shall have power to annul the proceedings without prejudice to any future suit. Provided always, that in the case of any new trial, the Court may receive evidence which was not adduced at the first trial.

XII. And it is hereby enacted, that every Plaintiff shall prefer his claim in writing, and shall deliver the same to the Station Staff Officer. The claims shall be entered in a Schedule by the Station Staff Officer, which Schedule is to be sent to Adjutants of Corps or Heads of Departments, two days at least before the assembly of the Court, and the Adjutant or Heads of Departments shall be responsible that the defendants belonging to their respective Corps or Establishments have been duly summoned.

XIII. And it is hereby enacted, that every decree of any Military Court of Requests shall be published in the Station Orders before the same is executed.

XIV. And it is hereby enacted, that the execution of decrees of Military Courts of Requests may be either general or special, according to the Sentence of the Court. Provided always, that the Commanding Officer may, notwithstanding the direction of the Court, order that the execution shall be general or special at his discretion.

XV. And it is hereby enacted, that in cases in which the execution is to be general, the debt if not paid forthwith, shall, under the authority of the Commanding Officer, in writing, to be signed by him, be levied by seizure and public sale of such of the debtor's goods, (under which term are included houses or other erections within the limits of Stations and Cantonments) as may be found within the limits of the Stations or Cantonment, or elsewhere, and if sufficient goods are not to be found, the debtor, if not a Soldier, shall be arrested and imprisoned in any Civil Gaol near to the Station or Cantonment, (for which purpose the provisions of Act No. II. of 1840, shall be applicable) or in any other convenient place of confinement, situate within the limits of the Station or Cantonment, for the space of two months, unless the debt be sooner paid, and his goods, if found within the limits of the Station or Cantonments, or elsewhere at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt. And if the debtor be a Soldier and the debt be not liquidated by sale of his Effects, Accoutrements and Necessaries excepted, an order may be issued for payment of the residue by monthly deduction from the pay issued to the debtor, or under the rules which follow.

XVI. And it is hereby enacted, that where the execution is to be special the debt shall be satisfied out of the pay and allowances of the debtor and not otherwise. And a certificate of the decree and direction or order thereon certified under the hand of the Commanding Officer and signed by him, shall be a sufficient authority for making such stoppages. Provided always, that no more than one half of the pay and allowances of any Commissioned Officer, or than one fourth of the pay and allowances of any Non-Commissioned Officer or Soldier shall be stopped in any one month.

XVII. And it is hereby enacted, that in places beyond the Frontier of the Territories of the East India Company, actions of debt and other personal actions may be brought before such Military Courts as aforesaid against persons so amenable as aforesaid for any amount of demand; Provided that such Military Courts beyond the Frontier shall be composed of European Officers; and provided, that if the amount of claim shall exceed 200 Rupees, an appeal shall be to the Court of Sudder Adawlut of the nearest presidency according to the Rules in force with regard to appeals from subordinate Civil Courts.

XVIII. And it is hereby enacted, that this Act shall not affect the proceedings upon any suit heretofore commenced, or which shall be commenced before the tenth day of August next.

CLXIV. Native Military Courts of Requests will, in receiving evidence, and in making their awards, be guided by the Local and Provincial Law of the Country, as administered under the Regulations of Government.

INQUESTS.

G. O. C. 4th.
Feb. 1822.

CLXV. Where an Inquest by a Coroner, or other Civil Authority, is not regularly attainable, and a report is made to a Commanding Officer of a Garrison, Station, or Division, that a Murder has been committed, or that a dead Body, not satisfactorily to be accounted for, has been found, he shall immediately direct the Body to be examined by a Medical Gentleman, if one is at hand, or otherwise by the most competent Person to give an opinion on such a subject; and a Court of Enquiry is to be assembled, in order to investigate the circumstances of the Murder. It shall then be the duty of the Court of Inquiry to ascertain, with as much exactness as possible, the precise nature of the wounds or blows, and of the instrument or means, by which death was occasioned; the person or persons who actually inflicted the mortal blow; and if there were any aiders or abettors in the commission of the Murder, and such other particulars as may afford the means of drawing up a Charge, (should this be found requisite) against the Individual or Individuals accused of the Murder, in that special manner, and with that precision, which is required by Law.

tary Court under this Act to determine any dispute of Casté or concerning any right to real property.

III. And it is hereby enacted, that the Commanding Officer of any Station or Cantonment or Officer Commanding any portion of Troops in the Field, is authorized to convene such Military Courts, and such Courts shall be composed according to the orders of the Commander in Chief for the time being of the Presidency within which the Station or Cantonment is situated, or, in the absence of such orders, according to the discretion of the convening Officer, either of not less than three European Commissioned Officers, or not less than three Native Commissioned Officers, and in the latter case, with an European Officer of not less than five years standing to superintend and record the proceedings. Provided that if there be not a sufficient number of Officers to constitute a Court at the Station or Cantonment where any cause of action may arise, or where the defendant may be residing, the suit shall be determined at the nearest Station or Cantonment where a Military Court can be duly constituted as aforesaid.

IV. And it is hereby enacted, that such Military Courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month.

V. And it is hereby enacted, that the forms of proceedings in every such Court shall be conformable to the usages observed on trials before Courts Martial, held for the Native Troops in the Service of the East India Company as far as the same are applicable. And any such Court shall have the like power of summoning witnesses as is possessed by Court Martial. Provided always, that every such Court shall have the power of examining the parties to any suit, and of requiring or dispensing with their attendance at its discretion; and every such Court shall have the like power of taking the examinations of absent parties and witnesses as is possessed by the Civil Court of the East India Company under Act No. VII of 1841, provided that the depositions taken under a Commission issued by any Military Court of Request shall be receivable in evidence before any such Court subsequently held; Provided also, that Commissions may be issued by Military Courts of Requests under this Act pursuant to the provisions of Act No. VII of 1841, notwithstanding the Courts to which the Commissions may be directed are not situate beyond the jurisdiction of such Military Courts.

VI. And it is hereby enacted, that witnesses omitting to attend, refusing to give evidence, or committing perjury, and persons suborning witnesses to commit perjury shall be tried, and punished, if amenable to Articles of War, by a Court Martial, subject to all the Rules contained in such Articles of War, for the punishment of such offences, in regard to trials for Military offences, and if not amenable to Articles of War, they may be tried and punished in the nearest of the Courts of the East India Company for the administration of Criminal Justice (whether such Court have ordinarily jurisdiction over such person in Criminal matters or not) in like manner as if such offences had been committed in regard to any trial before such nearest Court.

VII. And it is hereby enacted, that any person, Civil or Military, European or Native, using menacing words, signs, or gestures, or otherwise interrupting (whether being personally present or not,) the proceedings of any Military Court of Requests, shall be punishable, if amenable to Articles of War by a Court Martial, or if not amenable to Articles of War, in the nearest of the Courts of the East India Company for the administration of Criminal Justice, (whether such Court have ordinarily jurisdiction over such person in Criminal matters or not,) in like manner as if the offence had been committed in regard to any proceeding of the Court to which it is so referred.

VIII. And it is hereby enacted, that record shall be kept of proceedings in every case tried before any Military Court of Requests and such record shall contain the substance of the evidence given, and the nature of such evidence as may have been rejected on the ground of its not being legally admissible, or relevant, or on other grounds, and the same shall be signed by the Members of the said Court. And such record or a copy thereof shall, with as little delay as is practicable, after the conclusion of the proceedings, be transmitted by the European President, or Superintending Officer of every such Court, to the Officer Commanding the Station or Cantonment.

IX. And it is hereby enacted, that where a demand shall exceed the amount of 200 Rupees, or where several separate demands shall exceed such amount, no more shall be recoverable from any one defendant by the same Plaintiff or Plaintiffs than the sum of 200 Rupees only, and the judgment in respect of any demand in a Court of Requests shall be a bar to the recovery of the same demand, or of any other or further demand for the same cause of action in any other Court whatever, provided that the liability accrued before the time of instituting the suit in the Military Court, and it shall be competent for every such Military Court to investigate any counterclaim alleged by any defendant. And it shall be competent for every such Military Court to allow the interest for money agreed on between the parties, provided the same does not exceed the usage of the Country in ordinary money transactions. And every Contract made after the passing of this Act, upon which a demand for debt exceeding 20 Rupees is founded, not being money due for goods bought and delivered, shall be in writing, and expressed in the language of the defendant and signed by him, or on his behalf by some other person than the Plaintiff. Provided that it shall not be competent to any Court of Requests to admit any suit for a debt which has accrued upwards of six years, unless a direct promise to pay made within six years of the commencement of the suit be proved.

X. And it is hereby enacted, that on failure of either of the parties to a suit to attend either personally or by representative, or to produce his witnesses according as he shall be required by any Military Court of Requests, such Court on being satisfied that the party has been duly apprized of what is required of him, may proceed to the termination of the suit