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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th February 1869, and is hereby promulgated for general information :—

Act No. IV. of 1869.

THE INDIAN DIVORCE ACT, 1869.

CONTENTS.

Preamble.

I.—Preliminary.

SECTION
1. Short title.
Commencement of Act.
2. Extent of Act.
Extent of power to grant relief generally and to make decrees of dissolution and nullity.
3. Interpretation clause.

II.—Jurisdiction.

4. Matrimonial jurisdiction of High Courts to be exercised subject to this Act.
Exception.
5. Enforcement of decrees or orders made heretofore by any Supreme or High Court.
6. Pending suits.
7. Court to act on principles of English Divorce Court.
8. Extraordinary jurisdiction of High Court.
Power to transfer suits.
9. Reference to High Court.

III.—Dissolution of Marriage.

10. When husband may petition for dissolution.
When wife may petition for dissolution.
Contents of petition.
11. Adulterer to be a co-respondent.
12. Court to be satisfied of absence of collusion.
13. Dismissal of petition.
14. Power to Court to pronounce decree for dissolving marriage.
Condonation.
15. Relief in case of opposition on certain grounds.
16. Decrees for dissolution to be *nisi*.
Collusion.
17. Confirmation of decree for dissolution by District Judge.

SECTION

IV.—Nullity of Marriage.

18. Petition for decree of nullity.
19. Grounds of decree.
20. Confirmation of District Judge's decree.
21. Children of annulled marriage.

V.—Judicial Separation.

22. No decree for divorce *a mensâ et toro* to be made.
Decree of judicial separation obtainable by husband or wife.
23. Application for separation made by petition.
24. Separated wife to be deemed a spinster with respect to after-acquired property.
25. Separated wife to be deemed a spinster for purposes of contract and suing.

Reversal of Decree of Separation.

26. Decree of separation obtained during the absence of husband or wife may be reversed.

VI.—Protection Orders.

27. Deserted wife may apply to Court for protection.
28. Court may grant protection-order.
29. Discharge or variation of orders.
30. Liability of husband seizing his wife's property after notice of order.
31. Wife's legal position during continuance of order.

VII.—Restitution of Conjugal Rights.

32. Petition for restitution of conjugal rights.
33. Answer to petition.

VIII.—Damages and Costs.

34. Husband may claim damages from adulterer.
35. Power to order adulterer to pay costs.
Power to order litigious intervenor to pay costs.

IX.—Alimony.

36. Alimony *pendente lite*.
37. Power to order permanent alimony.
Power to order monthly or weekly payments.
38. Court may direct payment of alimony to wife or to her trustee.

X.—Settlements.

39. Power to order settlement of wife's property for benefit of husband and children.
Settlement of damages.
40. Inquiry into existence of antenuptial or post-nuptial settlements.

XI.—Custody of Children.

SECTION
41. Power to make orders as to custody of children in suit for separation.
42. Power to make such orders after decree.
43. Power to make orders as to custody of children in suit for dissolution or nullity.
44. Power to make such orders after decree or confirmation.

XII.—Procedure.

45. Code of Civil Procedure to apply.
46. Forms of petitions and statements.
47. Stamp on petition.
Petition to state absence of collusion.
Statements to be verified.
48. Suits on behalf of lunatics.
49. Suits by minors.
50. Service of petition.
51. Mode of taking evidence.
52. Competence of husband and wife to give evidence as to cruelty or desertion.
53. Power to close doors.
54. Power to adjourn.
55. Enforcement of and appeals from orders and decrees.
No appeal as to costs.
56. Appeal to Queen in Council.

XIII.—Re-marriage.

57. Liberty to parties to marry again.
58. English clergyman not compelled to solemnize marriages of person divorced for adultery.
59. English Minister refusing to perform ceremony to permit use of his church.

XIV.—Miscellaneous.

60. Decree for separation or protection-order to be valid as to persons dealing with wife before reversal.
Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.
61. Bar of suit for criminal conversation.
62. Power to make rules.

SCHEDULE OF FORMS.

Nos.
1. Petition by husband for dissolution of marriage with damages against co-respondent, by reason of adultery.
2. Respondent's statement in answer to No. 1.
3. Co-respondent's statement in answer to No. 1.
4. Petition for decree of nullity of marriage.
5. Petition by wife for judicial separation on the ground of her husband's adultery.
6. Statement in answer to No. 5.
7. Statement in reply to No. 6.
8. Petition for a judicial separation by reason of cruelty.
9. Statement in answer to No. 8.
10. Petition for reversal of decree of separation.
11. Form of petition for protection-order.
12. Petition for alimony pending the suit.
13. Statement in answer to No. 12.
14. Form of undertaking by minor's next friend to be answerable for respondent's costs.

An Act to amend the law relating to Divorce and Matrimonial Causes in India.

Preamble.

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial: It is hereby enacted as follows:—

I.—Preliminary.

Short title. Commencement of Act.

1. This Act may be called "The Indian Divorce Act," and shall come into operation on the first day of April 1869.

Extent of Act.

2. This Act shall extend to the whole of British India, and (so far only as regards British subjects within the dominions hereinafter mentioned) to the dominions of Princes and States in India in alliance with Her Majesty.

Extent of power to grant relief generally.

Nothing hereinafter contained shall authorize any Court to grant any relief under this Act, except in cases where the petitioner professes the Christian religion and resides in India at the time of presenting the petition;

And to make decrees of dissolution.

or to make decrees of dissolution of marriage except in the following cases:—(*a*) where the marriage shall have been solemnized in India; or (*b*) where the adultery, rape, or unnatural crime complained of shall have been committed in India; or (*c*) where the husband has, since the solemnization of the marriage, exchanged his profession of Christianity for the profession of some other form of religion;

Or of nullity.

or to make decrees of nullity of marriage except in cases where the marriage has been solemnized in India.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

"High Court."

(1) "High Court" means, in any Regulation Province, the Court there established under the Act of the twenty-fourth and twenty-fifth of Victoria, Chapter one hundred and four,

in the territories for the time being subject to the government of the Lieutenant Governor of the Panjáb, the Chief Court of the Panjáb,

in British Burmah, the High Court of Judicature at Fort William in Bengal,

and in any other Non-Regulation Province and in any place in the dominions of the Princes and States of India in alliance with Her Majesty, the High Court or Chief Court to whose original criminal jurisdiction the petitioner is for the time being subject, or would be subject, if he or she were an European British subject of Her Majesty:

In the case of any petition under this Act, 'High Court' is that one of the aforesaid Courts within the local limits of whose ordinary appellate jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

"District Judge."

(2) "District Judge" means, in the Regulation Provinces, a Judge of a principal Civil Court of original jurisdiction,

in the Non-Regulation Provinces, other than British Burmah and Sind, a Commissioner of a Division,

in Pegu, the Recorder at Rangoon,

in Arrakan, the Recorder at Rangoon until a Recorder's Court is established at Akyab, and thenceforward the Recorder at Akyab,

in the Tenasserim Provinces, the Recorder at Maulmain,

in Sind, the Judicial Commissioner in that province,

and in any place in the dominions of the Princes and States aforesaid, such officer as the Governor General of India in Council shall from time to time appoint in this behalf by notification in the *Gazette of India*, and, in the absence of such officer, the High Court in the exercise of its original jurisdiction under this Act:

"District Court."

(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act the husband and wife reside or last resided together:

"Court."

(4) "Court" means the High Court or the District Court, as the case may be:

"Minor Children."

(5) "Minor children" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years: In other cases it means unmarried children who have not completed the age of eighteen years:

"Incestuous adultery."

(6) "Incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity:

"Bigamy with adultery."

(7) "Bigamy with adultery" means adultery with the same woman with whom the bigamy was committed:

"Marriage with another woman."

(8) "Marriage with another woman" means marriage of any person being married to any other person, during the life of the former wife, whether the second marriage shall have taken place within the dominions of Her Majesty or elsewhere.

"Desertion."

(9). "Desertion" implies an abandonment against the wish of the person charging it;

"Property."

(10) And "property" includes in the case of a wife any property to which she is entitled for an estate in remainder, or reversion or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

II.—Jurisdiction.

Matrimonial jurisdiction of High Courts to be exercised subject to this Act.

Exception.

4. The jurisdiction now exercised by the High Courts in respect of divorce *a mensâ et toro*, and in all other causes, suits, and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act maintained, and not otherwise: except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

Enforcement of decrees or orders made heretofore by any Supreme or High Court.

5. Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras, or Bombay sitting on the ecclesiastical side, or of any of the said High Courts sitting in the exercise of their matrimonial jurisdiction respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

Pending suits.

6. All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

Court to act on principles of English Divorce Court.

7. Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief.

Extraordinary jurisdiction of High Court.

8. The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.

The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

Reference to High Courts.

9. When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case, and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—Dissolution of Marriage.

When husband may petition for dissolution.

10. Any husband may present a petition to the District Court or to the High Court, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for a dissolution.

Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground that since the solemnization thereof her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy, or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce *a mensâ et toro*,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition.

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Adulterer to be a co-respondent.

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:—

(1) That the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed.

(2) That the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it.

(3) That the alleged adulterer is dead.

Court to be satisfied of absence of collusion.

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any maner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter-charge which may be made against the petitioner.

Dismissal of petition.

13. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

When a petition is dismissed by a District Court under this section, the petitioner may, nevertheless, present a similar petition to the High Court.

Power to Court to pronounce decree for dissolving marriage.

14. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation.

No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

Relief in case of opposition on certain grounds.

15. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

Decrees for dissolution to be *nisi*.

16. Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a District Court, shall, in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

Collusion.

During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of Counsel and witnesses and otherwise arising from such cause being shown to be paid by the parties or such one or more of them as it thinks fit, including a wife, if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

Confirmation of decree for dissolution by District Judge.

17. Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the Senior Judge shall prevail.

The High Court, if it think further inquiry or additional evidence to be necessary, may direct such inquiry to be made, or such evidence to be taken.

The result of such inquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit.

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court by general or special order from time to time directs.

During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section eight, and the High Court shall thereupon, if it think fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section sixteen shall apply to every suit so removed: or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary to enable him to make a decree in accordance with the justice of the case.

IV.—Nullity of Marriage.

Petition for decree of nullity.

18. Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

Grounds of decree.

19. Such decree may be made on any of the following grounds:—

(1) That the respondent was impotent at the time of the marriage, and at the time of the institution of the suit;

(2) That the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(3) That either party was a lunatic or idiot at the time of the marriage;

(4) That the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

Confirmation of District Judge's decree.

20. Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section seventeen, clauses one, two, three, and four, shall, *mutatis mutandis*, apply to such decrees.

Children of annulled marriage.

21. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.—Judicial Separation.

No decree for divorce *a mensâ et toro* to be made.

22. No decree shall hereafter be made for a divorce *a mensâ et toro*, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce *a mensâ et toro* under the existing law, and such other legal effect as hereinafter mentioned.

Decree of Judicial separation obtainable by husband or wife.

Application for separation made by petition.

23. Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court or the High Court; and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

Separated wife to be deemed a spinster with respect to after-acquired property.

24. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease she shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place

shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

Separated wife to be deemed a spinster for purposes of contract and suing.

25. In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted, or incurred by her during the separation.

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation.

Decree of separation obtained during the absence of husband or wife may be reversed.

26. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced praying for a reversal of such decree on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—Protection Orders.

Deserted wife may apply to the Court for protection.

27. Any wife to whom the fourth section of the Indian Succession Act, 1865, does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed, or may become possessed, after such desertion against her husband or his creditors, or any person claiming under him.

Court may grant protection-order.

28. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband, and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

Discharge or variation of orders.

29. The husband or any creditor of, or person claiming under, him may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

Liability of husband seizing his wife's property after notice of order.

30. If the husband or any creditor of, or person claiming under, the husband seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

Wife's legal position during continuance of order.

31. So long as any such order of protection remains in force, the wife shall be, and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts, and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—Restitution of Conjugal Rights.

Petition for restitution of conjugal rights.

32. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court or the High Court, for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Answer to petition.

33. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—Damages and Costs.

Husband may claim damages from adulterer.

34. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court, limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

Power to order adulterer to pay costs.

35. Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceedings:

Provided that the co-respondent shall not be ordered to pay the petitioner's costs,

(1) If the respondent was at the time of the adultery living apart from her husband and leading the life of a prostitute, or

(2) If the co-respondent had not at the time of the adultery reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.

Whenever any application is made under Section seventeen, the Court if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

IX.—Alimony.

Alimony *pendente lite.*

36. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average nett income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

Power to order permanent alimony.

37. The High Court may, if it think fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.

In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

Court may direct payment of alimony to wife or to her trustee.

38. In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—Settlements.

Power to order settlement of wife's property for benefit of husband and children.

39. Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid, notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.

The Court may direct that the whole or any part of the damages recovered under Section thirty-four shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

Inquiry into existence of ante-nuptial or post-nuptial settlements.

40. The High Court, after a decree absolute for dissolution of marriage, or a decree of nullity of marriage,

and the District Court after its decree for dissolution of marriage or of nullity of marriage has been confirmed,

may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI.—Custody of Children.

Power to make orders as to custody of children in suit for separation.

41. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the said Court.

Power to make such orders after decree.

42. The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children

under the protection of the said Court as might have been made by such decree, or by interim orders in case the proceedings for obtaining such decree were still pending.

Power to make orders as to custody of children in suits for dissolution or nullity.

43. In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in, or removed to, a High Court, the Court may from time to time, before making its decree absolute, or its decree (as the case may be), make such interim orders, and may make such provision in the decree absolute or decree,

and in any such suit instituted in a District Court, the Court may from time to time before its decree is confirmed make such interim orders, and may make such provision on such confirmation,

as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents is the subject of the suit;

and may, if it think fit, direct proceedings to be taken for placing such children under the protection of the Court.

Power to make such orders after decree or confirmation.

44. The High Court after a decree absolute for dissolution of marriage or a decree of nullity of marriage,

and the District Court after a decree for dissolution of marriage or of nullity of marriage has been confirmed,

may, upon application by petition for the purpose make from time to time all such orders and provision, with respect to the custody, maintenance, and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—Procedure.

Code of Civil Procedure to apply.

45. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

Forms of petitions and statements.

46. The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

Stamp on petition.

47. Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation, or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and shall, in the first, second and third cases mentioned in this section, state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Petition to state absence of collusion.

Statements to be verified.

The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

Suits on behalf of lunatics.

48. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

Suits by minors.

49. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall bear a stamp of eight annas, and shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

Service of petition.

50. Every petition under this Act shall be served on the party to be affected thereby, either within or without British India, in such manner as the High Court by general or special order from time to time directs:

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

Mode of taking evidence.

51. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

Competence of husband and wife to give evidence as to cruelty or desertion.

52. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion, without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

Power to close doors.

53. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

Power to adjourn.

54. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

Enforcement of and appeals from orders and decrees.

55. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from in the like manner

as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced, and may be appealed from under the laws, rules, and orders for the time being in force:

Provided that there shall be no appeal from a decree of a District Judge for dissolution of marriage or of nullity of marriage: nor from the order of the High Court confirming or refusing to confirm such decree.

Provided also that there shall be no appeal on the subject of costs only.

No appeal as to costs.

56. Any person may appeal to Her Majesty in Council from any decree (other than a decree *nisi*) or order under this Act of a High Court made on appeal or otherwise,

Appeal to Queen in Council.

and from any decree (other than a decree *nisi*) or order made in the exercise of original jurisdiction by Judges of a High Court, or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to Her Majesty in Council.

XIII.—Re-marriage.

57. When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

Liberty to parties to marry again.

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

Provided that no appeal to Her Majesty in Council has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

58. No clergyman in Holy Orders of the United Church of England and Ireland shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty, or censure for solemnizing or refusing to solemnize the marriage of any such person.

English clergyman not compelled to solemnize marriages of person divorced for adultery.

59. When any Minister of any Church or Chapel of the said United Church refuses to perform such marriage-service between any persons who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such Minister shall permit any other Minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage-service in such Church or Chapel.

English Minister refusing to perform ceremony to permit use of his church.

XIV.—Miscellaneous.

60. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary for the protection of any person dealing with the wife.

Decree for separation or protection order to be valid as to persons dealing with wife before reversal.

No reversal, discharge, or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge, or variation thereof.

All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged, or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer, or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

Indemnity of persons making payment to wife without notice of reversal of decree or protection order.

unless, at the time of the payment, transfer, or other act, such persons had notice of the reversal, discharge, or variation of the decree or order, or of the cessation or discontinuance of the separation.

61. After this Act comes into operation, no person competent to present a petition under Sections two and ten shall maintain a suit for criminal conversation with his wife.

Bar of suit for criminal conversation.

62. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same.

Power to make rules.

Provided that such rules, alterations, and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules, alterations, and additions shall be published in the local official Gazette.

SCHEDULE OF FORMS.

No. 1.—PETITION *by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.*

(*See Sections* 10 *and* 34).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of A.B. of ,

SHOWETH,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to C. B., then C. D., spinster at . (*a*)

(*a*) If the marriage was solemnized out of India the adultery must be shown to have been committed in India.

2. That from his said marriage, your petitioner lived and cohabited with his said wife at - and at , in , and lastly at in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the *three* years immediately preceding the day of , one thousand eight hundred and , X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period, the dates of which are unknown to your petitioner, the said C. B. in your petitioner's said house committed adultery with the said X. Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Honourable) Court will decree a dissolution of the said marriage, and that the said X. Y. do pay the sum of Rs. 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Honourable) Court seems fit.

(Signed) A. B. (*a*)

Form of Verification.

I, A. B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

No. 2.—Respondent's statement in answer to No. 1.

In the Court of the day of

Between A. B., petitioner,
C. B., respondent, and
X. Y., co-respondent.

C. B., the respondent, by D. E. her attorney [*or* vakil] in answer to the petition of A. B. says that she denies that she has on diverse or any occasions committed adultery with X. Y., as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Honourable) Court will reject the said petition.

C. B.

No. 3.—Co-respondent's statement in answer to No. 1.

In the (High) Court of
The day of

Between A. B., petitioner,
C. B., respondent, and
X. Y., co-respondent.

X. Y., the co-respondent, in answer to the petition filed in this cause saith that he denies that he committed adultery with the said C. B. as alleged in the said petition.

Wherefore the said X. Y. prays that this (Honourable) Court will reject the prayer of the said petitioner, and order him to pay the costs of and incident to the said petition.

X. Y.

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*No. 4.—*Petition *for Decree of Nullity of Marriage.*

(*See Section* 18).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of A. B., falsely called A. D.,

Showeth,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to C. D., then a bachelor of about thirty years of age at [*some place in India*].

2. That from the said day of one thousand eight hundred and , until the month of , one thousand eight hundred and , your petitioner lived and cohabited with the said C. D., at divers places, and particularly at aforesaid.

3. That the said C. D. has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said C. D. was, by reason of his impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said C. D. with respect to the subject of this suit.

Your petitioner, therefore, prays that this (Honourable) Court will declare that the said marriage is null and void.

Form of Verification: *See No.* 1.

No. 5.—Petition *by wife for judicial separation on the ground of her husband's adultery.*

(*See Section* 22).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of C. B., of
the wife of A. B.

Showeth,

1. That on the day of , one thousand eight hundred and sixty , your petitioner, then C. D., was lawfully married to A B. at the Church of , in the

2. That after her said marriage, your petitioner cohabited with the said A. B. at and at , and that your petitioner and her said husband have issue living of their said marriage, *three* children, to wit, &c., &c. (*a*)

3. That on divers occasions in or about the months of *August, September* and *October*, one thousand eight hundred and *sixty-eight*, the said A.B., at aforesaid, committed adultery with E. F., who was then living in the service of the said A. B. and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of *October, November*, and *December*, one thousand eight hundred and *sixty-eight*, the said A. B., at aforesaid, committed adultery with G. H., who was then living in the service of the said A. B. and your petitioner at their said residence place aforesaid.

5. That no collusion or connivance exists between your petitioner and the said A. B. with respect to the subject of the present suit.

Your petitioner therefore prays that this (Honourable) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) C. B. (*b*)

Form of Verification: *See No.* 1.

(*a*) The petition must be signed by the petitioner.

(*a*) State the respective ages of the children.
(*b*) The petition must be signed by the petitioner.

No. 6.—Statement in answer to No. 5.

In the (High) Court of

B. against B.

The day of 186 .

The respondent, A. B., by W. Y., his attorney [*or* vakíl] saith—

1. That he denies that he committed adultery with E. F., as in the 3rd paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with E. F., if any.

3. That he denies that he committed adultery with G. H., as in the 4th paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with G. H., if any.

Wherefore this respondent prays that this (Honourable) Court will reject the prayer of the said petition.

No. 7.—Statement in reply to No. 6.

In the (High) Court of

B. against B.

The day of 186 .

The petitioner C. B. by her attorney [*or* vakíl] says—

1. That she denies that she condoned the said adultery of the respondent with E. F. as in the 2nd paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery the same has been revived by the subsequent adultery of the respondent with G. H., as set forth in the 4th paragraph of the petition.

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*No. 8.—*Petition *for a Judicial Separation by reason of Cruelty.*

(*See Section* 22).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of A. B. (wife of C. B.) of

Showeth,

1. That on the day of , one thousand eight hundred and , your petitioner, then A. D., spinster, was lawfully married to C. B. at

2. That from her said marriage your petitioner lived and cohabited with her said husband at until the day of , one thousand eight hundred and , when your petitioner separated from her said husband as hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said C. B. habitually conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and most insulting language, and beating her with his fists, with a cane, or with some other weapon.

4. That on an evening in or about the month of one thousand eight hundred and the said C. B. in the highway and opposite to the house in which your petitioner and the said C. B. were then residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of F. D. your petitioner's brother.

5. That subsequently on the same evening, the said C. B. in his said house at aforesaid, struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of one thousand eight hundred and , the said C. B., in , without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.

7. That on the afternoon of the day of one thousand eight hundred and ,your petitioner, by reason of the great and continued cruelty practised towards her by her said husband, with assistance withdrew from the house of her said husband to the house of her father at : that from and after the said day of , one thousand eight hundred and , your petitioner hath lived separate and apart from her said husband, and hath never returned to his house or to cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Honourable) Court will decree a judicial separation between your petitioner and the said C. B., and also order that the said C. B. do pay the costs of and incident to these proceedings.

(Signed) A. B.

Form of Verification: *See No.* 1.

No. 9.—Statement in answer to No. 8.

In the (High) Court of

The day of

Between A. B., petitioner, and C. B., respondent.

C. B., the respondent, in answer to the petition filed in this cause by W. J. his attorney [*or* vakíl], saith that he denies that he has been guilty of cruelty towards the said A. B., as alleged in the said petition.

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*No. 10.—*Petition *for reversal of Decree of Separation.*

(*See Section* 24).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of A. B. of

Showeth,

1. That your petitioner was on the day of lawfully married to

2. That on the day of , this (Honourable) Court at the petition of , pronounced a decree affecting the petitioner to the effect following, to wit,—

[*Here set out the Decree*].

3. That such decree was obtained in the absence of your petitioner, who was then residing at

[*State facts tending to show that the petitioner did not know of the proceedings; and, further, that had he known, he might have offered a sufficient defence.*]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner, therefore, prays that this (Honourable) Court will reverse the said decree.

Form of Verification : See No. 1.

No. 11.—FORM *of Petition for Protection-order.* (*See Section* 27).

In the (High) Court of

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of C. B., *of* , the wife of A. B.,

SHOWETH,

That on the day of she was lawfully married to A. B., at

That she lived and cohabited with the said A. B. for years at , and also at , and hath had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said A.B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry [*or* on her own property, *as the case may be*], and hath thereby and otherwise acquired certain property, consisting of [*here state generally the nature of the property*].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of , from the said A. B., and from all creditors and persons claiming under him.

No. 12.—PETITION *for Alimony pending the suit.* (*See Section* 36).

In the (High) Court of

B. against B.

To the Honourable Mr. Justice [*or* To the Judge of].

The day of 186 .

The petition of C. B., the lawful wife of A. B.,

SHOWETH,

1. That the said A. B. has for some years carried on the business of , at , and from such business derives the net annual income of from Rs. 4,000 to Rs. 5,000.

2. That the said A. B. is possessed of plate, furniture, linen, and other effects, at his said house, aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said A. B. is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount (*a*).

Your petitioner, therefore, prays that this (Honourable) Court will decree such sum or sums of money by way of alimony, pending the suit, as to this (Honourable) Court may seem meet.

(Signed) C. B.

Form of Verification: See No. 1.

(*a*) The petitioner should state her husband's income as accurately as possible.

No. 13.—*Statement in answer to No.* 12.

In the (High) Court of

B. against B.

A. B., of , the above-named respondent, in answer to the petition for alimony pending the suit of C.B., says—

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years carried on the business of , at and that from such business I have derived a net annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the 2nd paragraph of the said petition, I say that I am possessed of plate, furniture, linen, and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture, and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches, and other effects in the 2nd paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say that within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. , and that she has ever since withheld and still withholds from me the same sum.

(Signed) A. B.

No. 14.—FORM *of undertaking by minor's next friend to be answerable for Respondent's costs.* (*See Section* 49).

In the (High) Court of

I, the undersigned A. B., of being the next friend of C. D., who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against D. D. of , hereby undertake to be responsible for the costs of the said D. D. in such suit, and that if the said C. D. fail to pay to the said D. D., when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him [*or* her] to pay to the said D. D., I will forthwith pay the same to the proper officer of this Court.

Dated this day of 186 .

(Signed) A. B.

INDEX.

(*Nothing hereinafter contained shall be deemed to have the force of law*).

Abandonment, implied in 'desertion,' sec. 3, cl. 9.
Absence, reversal of decree of separation obtained in, s. 26.
Accessory to adultery, secs. 12, 13, 14.
Act VIII. of 1859, see *Code of Civil Procedure*.
„ X. of 1865 (s. 4), sec. 27.
Adjournment of hearing, sec. 54.
Adulterer when to be a co-respondent, sec. 11.
See *Damages, Death*.
Adultery, committed in India, sec. 2.
„ incestuous, sec. 3, cl. 6.
„ bigamy with, defined, *ib.*, cl. 7.
„ dissolution of marriage on ground of, sec. 10.
„ coupled with cruelty, dissolution on ground of, *ib.*
„ coupled with desertion, dissolution on ground of, *ib.*
„ of petitioner, sec. 14.
„ neglect or misconduct conducing to, *ib.*
„ judicial separation on ground of, sec. 22.
„ English clergymen not compelled to re-marry persons divorced for, sec. 58.
„ revival of condoned, Schedule No. 7.
See *Accessory, Condonation*.
Affidavit, case may be verified by, sec. 51.
Affinity, prohibited degrees of, sec. 19.
Agreement between separated husband and wife, sec. 24.
Akyab, jurisdiction of Recorder at, sec. 3, cl. 2.
Alimony, non-payment of, sec. 25.
„ *pendente lite*, petition for, sec. 36.
„ „ service of copy of petition for, *ib.*
„ „ continuance of, *ib.*
„ power to order permanent, sec. 37.
Allied States, 'High Court' for, sec. 3, cl. 1.
„ 'District Judge' in, *ib.*, cl. 2.
Answer to petition for restitution of conjugal rights, sec 33.
Antenuptial settlement, see *Settlement*.
Apostacy and second marriage of husband, dissolution on ground of, secs. 2, 10.
Apostate respondent, sec. 2.
Appeals from orders and decrees, sec. 55.
„ not from District Judges decree for dissolution or of nullity, *ib.*
„ not from order of High Court as to confirmation of District Judge's decree, *ib.*
„ not on subject of costs only, *ib.*
„ to Queen in Council, sec. 56.
Appointment of new trustee to receive alimony, sec. 38.
See *Power*.
Arrakan, Recorder at Rangoon's jurisdiction in, sec. 3, cl. 2.
Bestiality, committed in India, sec. 2.
„ dissolution on ground of, sec. 10.
Bigamy with adultery, sec. 3, cl. 7.
„ „ dissolution on ground of, sec. 10.
Burmah, 'High Court' for, sec. 3, cl. 1.
„ 'District Judge' in, *ib.*, cl. 2.
Certificate of result of inquiry and additional evidence in cases of confirmation of decree for dissolution, sec. 17.
Chapel, see *Clergyman*.
Chief Court of Panjáb, sec. 3, cl. 1.
Children, of annulled marriage, sec. 21.
„ settlement of wife's property for benefit of, sec. 39.
„ parents not to be benefited at expense of, sec. 40.
See *Minor Children*.
Christian, petitioner must be a, sec. 2.
Church of England, see *Clergyman*.
Clergyman of English Church need not solemnize marriage of person divorced for adultery, sec. 58.
Clergyman to permit solemnization of such marriage in his Church or Chapel, sec. 59.
Closing doors, sec. 53.
Code of Civil Procedure to regulate proceedings under Act, sec. 45.
Cohabitation, continuance of, sec. 14.
„ resumption of, secs. 14, 24.
„ withdrawal from, sec. 32.
Collusion, Court to satisfy itself as to absence of, sec. 12.
„ dismissal of petition in case of, sec. 13.
„ power to show cause why decree for dissolution should not be made absolute on ground of, sec. 16.
„ power to apply for removal of suit to High Court on ground of, sec. 17.
„ power to order District Judge to take steps as to, *ib.*
„ certain petitions to state absence of, sec. 47.
Commencement of Act, sec. 1.
„ of desertion, sec. 28.
Commissioner of a Division to be a 'District Judge,' sec. 3, cl. 2.
Condonation of adultery, secs. 12, 13.
„ implies resumption or continuance of cohabitation, sec. 14.
See *Revival*.
Confirmation of decree for dissolution by District Judge, sec. 17.
„ Court to hear cases for, *ib.*
„ when pronounced, *ib.*
„ of District Judge's decree of nullity, sec. 20.
Conjugal rights, restitution of, sec. 32.
„ „ answer to petition for, sec. 33.
Connivance at adultery or at form of marriage of apostate, secs. 12, 13, 14.
„ certain petitions to state absence of, sec. 47.
Consanguinity either natural or legal, sec. 3, cl. 6.
„ prohibited decrees of, sec. 18.
Contingent decree, sec. 9.
Continuance of cohabitation, sec. 14.
„ alimony *pendente lite*, sec. 36.
Contracts of wife, during continuance of protection order, sec. 31.
Co-respondent, adulterer to be made a, sec. 11.
„ damages against, sec. 34.
„ may be ordered to pay costs, sec. 35.
Costs of showing cause in High Court why decree for dissolution should not be made absolute on ground of collusion, sec. 16.
„ incurred by separated wife, non-liability of husband for, sec. 25.
„ power to order co-respondent to pay, sec. 35.
„ power to order litigious intervenor to pay, *ib.*
„ minor's next friend to be answerable for, sec. 49.
„ no appeal on subject of, sec. 55.
Countercharge against petitioner, sec. 12.
'Court' defined, sec. 3, cl. 4.
See *Collusion, District Court, High Court*.
Coverture, disability of, sec. 39.
Creditors of husband seizing wife's property after notice of protection-order, sec. 30.
Criminal conversation, suit for, abolished in certain cases, sec. 61.
Cross-examination of deponent, sec. 51.
Cruelty, dissolution on ground of adultery coupled with, sec. 10.
„ of petitioner, sec. 14.
„ judicial separation on ground of, sec. 22.
„ husband and wife may give evidence as to, sec. 52.
Custody, see *Minor Children*.
Damages from adulterer, when claimable, sec. 34.
„ to be ascertained by Court, *ib.*
„ payment or application of, *ib.*
„ settlement of, sec. 40.
Death of alleged adulterer, sec. 11.

Decrees of Supreme Court, sec. 5.
„ for dissolution, sec. 14.
„ „ by High Court to be *nisi*, sec. 16.
„ „ by District Court to be confirmed, sec. 17.
„ of nullity, sec. 18.
„ of judicial separation, sec. 22.
„ reversal of, sec. 26.
„ of restitution of conjugal rights, sec. 32.
See *Appeals*.
Delay of petitioner, sec. 14.
„ „ in moving to have decree *nisi* made absolute, sec. 16.
Deponent, see *Affidavit, Cross-examination, Re-examination*.
Desertion, kind of abandonment implied in, sec. 3, cl. 9.
„ dissolution on ground of adultery coupled with, sec. 10.
„ by petitioner, sec. 14.
„ separation on ground of, sec. 22.
„ husband and wife may give evidence as to, sec. 52.
See *Reasonable excuse*.
Discharge of protection-order, sec. 29.
„ of order for permanent alimony, sec. 37.
Dimissal of petition for dissolution, sec. 13.
„ by District Court does not bar petition to High Court, *ib*.
„ of suit when petitioner fails to move to have decree *nisi* made absolute, sec. 16.
Dissolution of marriage, secs. 2, 10—17.
„ „ grounds of, sec. 10.
„ „ adulterer to be a co-respondent to petition for, sec. 11.
„ „ absence of collusion in petitioner for, sec. 12.
„ „ dismissal of petition for, sec. 13.
„ „ decree for, secs. 14, 16, 17.
„ „ relief in case of opposition to suit for, sec. 15.
„ „ removal of suits for, sec. 17.
„ „ damages claimable in petition for, sec. 34.
„ „ settlement on, sec. 39.
„ „ inquiry into settlements after, sec. 40.
„ „ orders for custody of children in suits for, sec. 43.
„ „ orders for custody of children after, sec. 44.
„ „ evidence in suits by wife for, sec. 52.
„ „ re-marriage after, secs. 57, 58, 59.
„ „ form of petition for, Schedule No. 1.
'District Court' defined, sec. 3, cl. 3.
„ to exercise matrimonial jurisdiction, sec. 4.
„ to act on principles of English Divorce Court, sec. 7.
„ removal of suits from, sec. 8, cl. 1.
„ transfer of suits to, *ib*., cl. 2.
„ reference of questions by, sec. 9.
„ petitions to, secs. 10, 18, 23, 26, 27, 32, 34, 36, 42, 44.
„ confirmation of its decrees for dissolution, sec. 17.
„ confirmation of its decrees of nullity, sec. 20.
„ may reverse decrees of separation, sec. 26
„ may order settlements, sec. 30.
„ to ascertain damages, sec. 34.
„ may order alimony, secs. 36, 37.
„ may inquire into settlements, sec. 40.
'District Court', may make orders as to custody of children, secs. 41, 42, 43, 44.
„ to approve of minor's next friend, sec. 49.
„ may close doors, sec. 53.
„ may adjourn, sec. 54.
„ enforcement of decrees and orders of, sec. 55.
„ appeals from decrees and orders of, *ib*.
See *District Judge, High Court*.
'District Judge' defined, sec. 3, cl. 2.
Division, see *Commissioner*.
Divorce, see *Dissolution of Marriage*.
„ *à mensâ et toro*, jurisdiction in respect of, sec. 4.
„ „ cruelty entitling to, sec. 10.
„ „ decree for, not to be made, sec. 22.
Divorce Court, Courts to act on principles of English, sec. 7.
Education, see *Minor children*.
Enforcement of decrees and orders of Supreme Court, sec. 5.
„ of High Court or District Court, sec. 55.
European British subject, sec. 3, cl. 1.
Evidence, High Court may direct additional, to be taken, sec. 7.
„ protection-order to be conclusive, sec. 28.
„ may be required on adjournment, sec. 45.
„ statements in petitions may be referred to as, sec. 47.
„ mode of taking, sec. 51.
See *Affidavit, Cross-examination, Cruelty, Re-examination, Witnesses*.
Execution stayed in case of reference, sec. 9.
Filing next friend's undertaking, sec. 49.
Forms of petitions and statements, sec. 46, and Schedule.
Further inquiry, secs. 16, 17.
„ evidence, secs. 17, 54.
Gazette, see *Notification, Rules*.
Governor General in Council may appoint 'District Judges' for allied States, sec. 3, cl. 2.
'High Court' defined, sec. 3, cl. 1.
„ exercise of matrimonial jurisdiction of, sec. 4.
„ enforcement of former decrees of, sec. 5.
„ pending suits in, sec. 6.
„ to act on principles of English Divorce Court, sec. 7.
„ extraordinary jurisdiction of, sec. 8.
„ may transfer suits, *ib*.
„ references to, sec. 9.
„ petitions to, secs. 10, 18, 23, 26, 27, 32, 34, 36, 42, 44.
„ its decrees for dissolution to be *nisi*, sec. 16.
„ showing cause why such decrees should not be made absolute, *ib*.
„ may reverse decree *nisi*, *ib*.
„ may require further inquiry, *ib*.
„ to confirm decrees of District Judge for dissolution, sec. 17.
„ may remove suits and try them, *ib*.
„ may direct District Judge to take steps in case of collusion, *ib*.
„ to confirm District Judge's decree of nullity, sec. 20.
„ may reverse decrees of separation, sec. 26.
„ to ascertain damages, sec. 34.
„ may order alimony, secs. 36, 37.
„ may order settlements, sec. 39.
„ may inquire into existence of settlements, sec. 40.
„ may make orders as to custody of children, secs. 41, 42, 43, 44.
„ to approve of minor's next friend, sec. 49.
„ may close doors, sec. 53.
„ may adjourn, sec. 54.
„ appeals from, secs. 55, 56.

'High Court' enforcement of decrees and orders of, sec. 55.
,, its power to make rules, sec. 62.
See *Orders*.
Husband, when he may petition for a dissolution, secs. 2, 10.
,, apostacy and re-marriage of, *ib.*
,, may petition for a decree of nullity, sec. 18.
,, may petition for a judicial separation, sec. 22.
,, of separated wife, non-liability of, sec. 25.
,, may petition for reversal of decree of separation, sec. 26.
,, seizing wife's property after notice of protection-order, sec. 30.
,, may petition for restitution of conjugal rights, sec. 32.
,, may claim damages against adulterer, sec. 34.
,, settlement of wife's property for benefit of, sec. 39.
,, may offer himself as a witness, sec. 51.
,, may give evidence as to cruelty or desertion, sec. 52.
See *Agreement, Children, Costs, Income, Necessaries, Power*.
Idiocy, decree of nullity on ground of, sec. 19.
Idiots, suits on behalf of, sec. 48.
Impotence, a ground for a decree of nullity, sec. 19.
'Incestuous adultery' defined, sec. 3, cl. 7.
,, ,, dissolution on ground of, sec. 10.
Income of husband to be considered in ordering alimony, sec. 36.
Indemnity of persons making payments to wife without notice of reversal of decree or protection-order, sec. 60.
Indian Succession Act (sec. 4), sec. 27.
Injuries, see *Wrongs*.
Inquiry, High Court may require further, sec. 16.
,, into existence of settlements, sec. 40.
Instrument securing permanent alimony, sec. 37.
,, validity of, notwithstanding coverture, sec. 39.
See *Settlement*.
Interim orders as to minor children, secs. 43, 44.
Intervention, see *Collusion, Costs*.
Intestacy of separated wife, sec. 24.
Judicial Commissioner in Sind to be a District Judge', sec. 3, cl. 2.
Judicial separation, when decree for, may be made, sec. 21.
,, ,, effect of decree for, sec. 22.
,, ,, obtainable either by husband or wife, *ib.*
,, ,, ground of, *ib.*
,, ,, application for, sec. 23.
,, ,, decree for, *ib.*
,, ,, rights of wife as to after-acquired property in case of, sec. 24.
,, ,, wife's rights and liabilities as to contracts and torts, sec. 25.
,, ,, effect of decree for, as to persons dealing with wife, sec. 60.
Jurisdiction in matters matrimonial to be exercised according to Act, sec. 4.
Liability of husband or his creditor taking wife's property after notice of protection order, sec. 30.
,, of minor's next friend, sec. 49.
Licenses, see *Marriage Licenses*.
Locus delicti, sec. 2.
Lunacy, decree of nullity on ground of, sec. 19.
Lunatics, children of, sec. 21.
,, suits on behalf of, sec. 48.
Maintenance of wife, power to order monthly or weekly payments for, sec. 37.
,, of children, see *Minor Children*.
Marriage-licenses, grantable as before the Act, sec. 4.
Marriage with another woman, sec. 3, cl. 8.
,, dissolution on ground of apostate's, sec. 10.
Marriage, dissolution on ground of, when coupled with adultery, sec. 10.
Maulmain, Recorder at, sec. 3, cl. 2.
Minor, suits by, sec. 49.
'Minor children' defined, sec. 3, cl. 5,
,, order for application of settled property not to be made at expense of, sec. 40.
,, custody, maintenance, and education of (in suits for separation), sec. 41.
,, after decree for separation, sec. 42.
,, in suits for dissolution or decree of nullity, sec. 43.
,, after decree of dissolution or confirmation, sec. 44.
Misconduct conducing to adultery, sec. 14.
Monthly payments, see *Maintenance*.
Native States, 'High Court' for, sec. 3, cl. 1.
,, 'District Judge' in, *ib.* cl. 2.
Native fathers, children of, sec. 3, cl. 5.
Necessaries supplied for use of separated wife, when husband liable for, sec. 25.
Neglect, see *Wilful Neglect*.
Next friend of minor, sec. 49.
,, ,, undertaking by, schedule No. 14.
Non-Regulation Provinces, 'High Court' for, sec. 3, cl. 1.
,, ,, 'District Judge' in, *ib.*, cl. 2.
Notice of protection order, sec. 30.
,, of reversal, discharge, or variation of decree or protection-orders, sec. 60.
Notification in *Gazette* of appointment of 'District Judge' in allied State, sec. 3, cl. 2.
Nullity of marriage, suits for declaration of, secs. 2, 18.
,, ,, grounds for decree of, sec. 19.
,, ,, confirmation of decree of nullity made by District Judge, sec. 20.
Oral examination of witnesses, sec. 51.
Orders of Supreme Court, sec. 5.
,, stay of execution of District Judge's, sec. 9.
,, as to time of making decrees for dissolution absolute, sec. 16.
,, as to showing cause why decree should not be made absolute, sec. 16.
,, as to time of confirming District Judge's decree for dissolution, sec. 17.
,, as to manner of applying for removal of suit on ground of collusion, *ib.*
,, protecting deserted wife's earnings and other property, sec. 28.
,, to be conclusive as to time of desertion, *ib.*
,, contents of, *ib.*
,, of discharge, variation, or reversal of, sec. 29.
,, liability of husband seizing her property after notice of, sec. 30.
,, wife's position during continuance of, sec. 31.
,, as to application of settled property, sec. 40.
,, as to custody, maintenance, and education of children, secs. 41, 42, 43.
,, as to placing children under protection of Court, secs. 42, 43.
,, as to service of petitions, sec. 50.
Panjáb, see *Chief Court*.
Pegu, Recorder at *Rangoon's jurisdiction in*, sec. 3, cl. 2.
Pending suits, how dealt with, sec. 6.
Permanent alimony, see *Alimony*.
Petition for dissolution, contents of, sec. 10.
,, co-respondent to, sec. 11.
,, dismissal of, sec. 13.
,, for Judicial separation, secs. 21, 22, 23.
,, for order to protect deserted wife's property, sec. 27, form of, Schedule No 11.
,, for damages against adulterer, sec. 34.
,, for custody, maintenance, or education of children, secs. 42, 44.
,, forms of, sec. 46.
,, to state absence of collusion, sec. 47.
,, verification of statements in, *ib.*
,, service of, sec. 50.
,, by husband for dissolution with damages, form of, Schedule No. 1.

Petition by wife for decree of nullity, form of, *ib.* No. 4.
„ „ for judicial separation on ground of adultery, form of, *ib.* No. 5.
„ „ for judicial separation on ground of cruelty, *ib.* No. 8.
„ by husband for reversal of decree of separation, *ib.* No. 10.
„ by wife for protection order, *ib.* No. 11.
„ „ for alimony pending the suit, *ib.* No. 12.
Postnuptial settlement, see *Settlement.*
Power, separated wife and husband may exercise joint, sec. 25.
Principles, see *Divorce Court.*
Privy Council, appeal to Queen in, sec. 56.
„ re-marriage after dismissal of appeal to, sec. 57.
Property,' what it includes in the case of a wife, sec. 3, cl. 10.
„ rights of separated wife as to after-acquired, sec. 24.
„ of wife during continuance of protection-order, sec. 30.
„ her position with regard to, sec. 31.
Prostitute, petition for dissolution when wife is living as a, sec. 11.
„ co-respondent not liable to pay costs when respondent lives as a, sec. 35.
Protection of Court, order for placing children under, sec. 44.
Protection-order, deserted wife may apply for, sec. 27.
„ effect of, as to persons dealing with wife, sec. 60.
Rangoon, Recorder at, sec. 3, cl. 2.
Rape, dissolution on ground of, secs. 2, 10.
Reasonable excuse for desertion, secs. 10, 14, 22, 26.
Recorders at Rangoon and Maulmain, their jurisdiction, sec. 3, cl. 2.
Re-examination of deponent, sec. 51.
Reference of questions to High Courts, sec. 9.
Regulation Provinces, 'High Court' in, sec. 3, cl. 1.
„ „ 'District Court' in, *ib.* cl. 2.
Relief to respondent, sec. 15.
Re-marriage of parties whose marriage is dissolved, sec. 57.
Removal of suits from District Court to High Court, sec. 8.
Residence in India of either petitioner or respondent, sec. 2.
„ of husband and wife together, sec. 3, cl. 3.
Respondent, wife relieved on grounds of petitioner's adultery, cruelty, or desertion, sec. 15.
„ husband relieved on ground of wife's adultery and cruelty, *ib.*
Restitution of conjugal rights, sec. 32.
„ „ answer to petition for, sec. 33.
„ „ lunatic's committee not to sue for, sec. 48.
Reversal of decree *nisi*, sec. 16.
„ of decree of separation, sec. 26.
Revival of order to pay permanent alimony, sec. 37.
„ of condoned adultery, Schedule No. 7.
Rules of English Divorce Court, sec. 7.
„ High Court's power to make, sec. 62.
„ to be consistent with this Act and Code of Civil Procedure, *ib.*
„ to be published in the *Gazette*, *ib.*

See *Orders.*

Separate property of wife, costs payable out of, sec. 16.
„ use, property acquired by wife after judicial separation, to be on resumption of co-habitation, to her, sec. 24.
Separation, see *Agreement, Costs, Judicial Separation, Necessaries, Power, Wilful Separation.*
Service of petition for damages on alleged adulterer, sec. 34.
Service of petition for alimony *pendente lite*, sec. 36.
„ of petitions, sec. 50.
„ dispensation with, *ib.*
Settlement of wife's property for benefit of husband and children, sec. 39.
„ of damages, *ib.*
„ inquiry as to antenuptial or postnuptial, sec. 40.
Short title, sec. 1.
Sind, District Judge's sec. 3, cl. 2.
Sodomy, dissolution on ground of, secs. 2, 10.
Stamp on petitions, sec. 47.
„ on undertaking by minor's next friend, sec. 49.
Statements, form of, sec. 46, and see schedules Nos. 2, 3, 6, 7, 9, 13.
„ in petitions, to be verified, sec. 47.
Stay of proceedings in execution of decree, sec. 9.
Suits by and against separated wife, sec. 25.
„ by wife holding protection-order against husband, sec. 30.
„ by or against wife holding protection-order, sec. 31.
„ for criminal conversation abolished in certain cases, sec. 61.

See *Pending Suits.*

Supreme Courts, enforcement of decrees of, sec. 5.
Suspension of decree or confirmation till execution of instrument securing permanent alimony, sec. 37.
„ of order for making monthly or weekly payments for wife's maintenance, *ib.*
Tenasserim Provinces, Recorder of Maulmain's jurisdiction in, sec 3, cl. 2.
Trustee, payment of alimony to wife's, sec. 38.
„ court may appoint new, *ib.*
Undertaking by minor's next friend, sec. 49, and schedule No. 14.
Unreasonable delay, sec. 14.
Variation of protection-order, sec. 29.
Verification of case by affidavit, sec. 51.
„ of petitions, form of, schedule No. 1.
Weekly payments, see *Maintenance.*
Wife may petition for a dissolution, secs. 2, 10.
„ may petition for a decree of nullity, sec. 18.
„ may petition for a decree of judicial separation, sec. 22.
„ may petition for a protection-order, sec. 27.
„ may petition for restitution of conjugal rights, sec. 32.
„ may petition for alimony *pendente lite*, sec. 36.
„ may offer herself as a witness, sec. 51.
„ may give evidence as to cruelty or desertion, sec. 52.
See *Agreement, Children, Contracts, Costs, Creditors, Indemnity, Intestacy, Necessaries, Power, Separate Property, Separate Use, Settlement, Suits, Will, Wrongs.*
Wilful neglect by petitioner, sec. 14.
„ separation by petitioner, *ib.*
Will of separated wife, sec. 24.
Witnesses to be examined orally, sec. 51.
„ parties may offer themselves as, *ib.*
„ as to cruelty and desertion, husband and wife may be, sec. 52.

See *Affidavits.*

Wrongs, separated wife to be deemed unmarried as to sec. 25.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th February 1869, and is hereby promulgated for general information:—

Act No. V of 1869.

THE INDIAN ARTICLES OF WAR.

TABLE OF CONTENTS.

Preamble.

PART I.—PRELIMINARY.

(*a*)—Short Title.
(*b*)—Commencement of Act.
(*c*)—Repeal of enatments.
(*d*)—Application of Articles.
(*e*)—Interpretation clause.
(*f*)—Saving of certain Regulations.

PART II.—THE ARTICLES OF WAR.

TITLE I.—ENLISTMENT, DISMISSAL, AND DISCHARGE.

CHAPTER I.—*Enlistment.*

Article 1.—Articles to be read to recruits. Affirmation.
Article 2.—Attestation.

CHAPTER II.—*Dismissal and Discharge.*

Article 3.—Dismissal of Commissioned Officers.
Article 4.—Dismissal of other persons.
Article 5.—Attested person dismissed reenlisting.
Article 6.—Certificate to person dismissed.

TITLE II.—MILITARY OFFENCES.

CHAPTER I.—*Crimes punishable with Death or Transportation.*

Article 7.—Mutiny and sedition.
Article 8.—Violence to Suprior.
Article 9.—Disobedience.
Article 10.—Desertion.
Article 11.—Re-enlistment without having discharge.
Article 12.—Sentry sleeping on or quitting post in time of war.
Article 13.—Sentry plundering.
Article 14.—Abandoning garrison.
Article 15.—Betraying watch-word.
Article 16.—Corresponding with enemy.
Article 17.—Assisting enemy.
Article 18.—Releasing prisoners.
Article 19.—Misbehaviour in presence of enemy.
Article 20.—Seeking plunder during action.
Article 21.—Quitting guard in time of war.
Article 22.—Assaulting persons bringing provisions.
Article 23.—Causing alarm in time of war.
Article 24.—Punishment for the foregoing offences.

CHAPTER II.—*Crimes punishable otherwise than by Death or Transportation.*

Article 25.—Unbecoming behaviour.
Article 26.—Intoxication on duty.
Article 27.—Striking sentry.
Article 28.—Harbouring deserter.
Article 29.—Enlisting deserter.
Article 30.—Absence without leave.
Article 31.—Failure to rejoin.
Article 32.—Failure to attend parade.
Article 33.—Quitting parade or division.
Article 34.—Quitting guard in time of peace.
Article 35.—Refusing to receive or releasing prisoners.
Article 36.—Leaving arrest.
Article 37.—Insubordination.
Article 38.—Refusal to superintend military works.
Article 39.—Impeding Provost Marshal.
Article 40.—Striking subordinates.
Article 41.—Extortion.
Article 42.—House-breaking or plundering in time of peace.
Article 43.—Neglecting to compensate person injured by subordinate.
Article 44.—Defiling places of worship.
Article 45.—Taking bribes.
Article 46.—Causing false alarm in time of peace.
Article 47.—Making away with regimental necessaries.
Article 48.—Attempting suicide.
Article 49.—Appearing armed in camp.
Article 50.—Sentry sleeping on post in time of peace.
Article 51.—Absence from camp.
Article 52.—Absence from cantonment after tattoo.
Article 53.—Punishment for offences mentioned in Articles 25 to 52.

CHAPTER III.—*Crimes to be punished with Dismissal from the Services.*

Article 54.—Embezzlement.
Article 55.—Destruction of Government property.
Article 56.—Giving false evidence.
Article 57.—Punishment for offences mentioned in Articles 54, 55, 56.

CHAPTER IV.—*Disgraceful Conduct.*

Article 58.—Malingering.
Article 59.—Wilfully causing hurt.
Article 60.—Theft.
Article 61.—Embezzlement of Government property not entrusted on public account.
Article 62.—Obtaining pension by false statement.
Article 63.—Furnishing false returns.
Article 64.—Other fraudulent offences.
Article 65.—Cruelty or indecency.
Article 66.—Penalties for offences specified in Articles 58 to 65.

CHAPTER V.—*Offences against Courts Martial.*

Article 67.—Refusing to attend or be sworn.
Article 68.—Contempts.
Article 69.—Punishment for offences specified in Articles 67 and 68.

CHAPTER VI.—*Unspecified Offences.*

Article 70.—Unspecified offences.
Article 71.—Abetment.

TITLE III.—JURISDICTION.

CHAPTER I.—*Courts Martial.*

Article 72.—Kinds of Courts Martial.

(1)—*General Court Martial.*

Article 73.—Appointment of Court General Martial.
Article 74.—Composition of such Court.
Article 75.—Composition of such Court appointed under orders in Council.
Article 76.—Powers of such Court.

(2)—*Detachment General Court Martial.*

Article 77.—Appointment of such Court Martial.
Article 78.—Its composition and powers.

(3)—*District Court Martial.*

(4)—*Garrison Court Martial.*

Article 79.—Appointment of such Courts.
Article 80.—Composition of such Courts.
Article 81.—Officers composing such Courts.
Article 82.—Powers of such Courts.

(5)—*Regimental Court Martial.*

Article 83.—Appointment of such Court.
Article 84.—Composition of such Court.
Article 85.—Powers of such Court.

(6)—*Regimental Detachment Court Martial.*

(7)—*Detachment Court Martial.*

Article 86.—Appointment of Regimental Detachment Court Martial.
Article 87.—Appointment of Detachment Court Martial.
Article 88.—Composition of such Courts.
Article 89.—Powers of such Courts.

(8)—*Summary Court Martial.*

Article 90.—Summary Court Martial.
Article 91.—Constitution of such Court.
Article 92.—Persons triable by such Court
Article 93.—Offences triable by such Court.
Article 94.—Its powers.

Article 95.—Trial of grave offences by inferior Courts.
Article 96.—Courts composed of European Officers.
Article 97.—Claim to be tried by European Officers.

CHAPTER II.—*Procedure.*

Article 98.—Limitation of trials.
Article 99.—Place of trial.
Article 100.—Arrest or confinement of accused.
Article 101.—Judge Advocate.
Article 102.—Interpreter.
Article 103.—President.
Article 104.—Conduct of proceedings.
Article 105.—Precedence of Native Officers.
Article 106.—Time of trial.
Adjournment and re-assembly.
Article 107.—Challenges.
Article 108.—Interpreter's oath.
Article 109.—Oaths of President and Members.
Article 110.—Judge Advocate's oath.
Article 111.—Oaths of witnesses.
Article 112.—Oaths to be binding on conscience.
Article 113.—Re-swearing in case of several trials.
Article 114.—Presumptive evidence of desertion.
Article 115.—Reference by prisoner to Government Officer.
Article 116.—Trial for desertion.
Article 117.—Evidence of previous convictions and general character.
Article 118.—Voting of members.
Article 119.—Majority requisite to sentence of death.
Article 120.—Revision of finding or sentence.
Article 121.—Procedure to be generally followed.
Article 122.—Summoning witnesses.
Article 123.—Contempts of Court.
Article 124.—Privilege of witnesses.

Summary Courts Martial.

Article 125.—Persons to attend Summary Court Martial.
Article 126.—Proceedings of such Courts.
Article 127.—Oaths of Interpreter and Officer holding trial.
Article 128.—Evidence.
Article 129.—Signature and transmission of proceedings.

CHAPTER III.—*Sentences.*

Article 130.—Of General Court Martial.
Article 131.—Of General, District, or Garrison Courts Martial.
Article 132.—Reduction, dismissal, corporal punishment, and imprisonment.
Article 133.—Limit of imprisonment.
Article 134.—Solitary confinement.
Article 135.—Reduction to ranks.
Article 136.—Forfeiture of pay and pension.
Article 137.—Forfeiture of arrears of pay.
Article 138.—Stoppages.
Article 139.—Extent of stoppages.
Article 140.—Sentence of transportation or imprisonment on person already sentenced.
Article 141.—Form of sentence of death.

CHAPTER IV.—*Confirmation and Commutation of Sentences.*

Article 142.—Sentences to be confirmed or otherwise disposed of.
Article 143.—Sentence of death.
Article 144.—Sentence of penal servitude or transportation.
Article 145.—Sentence of dismissal on Commissioned Officers, &c.
Article 146.—Any sentence on Commissioned Officers, &c.
Article 147.—Sentence of corporal punishment.
Article 148.—Sentence of imprisonment with hard labour.
Article 149.—Sentence of reduction with corporal punishment or imprisonment.
Commutation of sentence of dismissal on Non-Commissioned Officers.

CHAPTER V.—*Execution of Sentences.*

Article 150.—Transportation.
Article 151.—Imprisonment with hard labour.
Article 152.—Place of imprisonment.
Article 153.—Transfer to military custody.
Article 154.—Forfeiture of pay during imprisonment.
Article 155.—Striking convict off strength of regiment.
Article 156.—Non-re-admission of convict.
Article 157.—Dismissal with ignominy.
Article 158.—Publication of sentence for disgraceful conduct.
Article 159.—Sentences of Summary Court Martial.

CHAPTER VI.—*Pardons and Remissions.*

Article 160.—Pardon of person convicted of Military offence.
Article 161.—Release of prisoners.

CHAPTER VII.—*Regimental Courts of Enquiry.*

Article 162.—Regimental Courts of Enquiry.
Article 163.—Persons absent as prisoners of war.

TITLE IV.—POWERS OF OFFICERS INDEPENDENTLY OF TRIAL.

Article 164.—Reduction to ranks.
Article 165.—Minor punishments.
Article 166.—Offences of Native followers.
Article 167.—Complaints against Officers.
Article 168.—Provost Marshals.
Article 169.—Their duties and powers.

TITLE V.—NON-MILITARY OFFENCES.

Article 170.—Offences committed within jurisdiction of Criminal Court in British India.
Article 171.—Offences committed out of British India.
Article 172.—General Court Martial for trial of such offences.
Article 173.—Sentences of such Court.
Article 174.—Confirmation of sentences.
Article 175.—Commutation of sentences and provision as to prisoners.

TITLE VI.—EFFECTS OF DECEASED MEN AND DESERTERS.

Article 176.—Effects of deceased men and of deserters.
Article 177.—Sale of effects and discharge of debts.
Article 178.—Remittal of surplus to General Treasury.
Article 179.—Sale of effects of deserters.
Remittal of proceeds.

PART III.—MISCELLANEOUS.

(*a*)—Prohibition of second trial.
(*b*)—Prohibition of arrest for debt.
(*c*)—Breach of cantonment rules.

(*d*)—Capture of deserters.
(*e*)—Apprehension of military offenders.
(*f*)—Presumption as to signatures.
(*g*)—Native Troops serving out of their own Presidency.
(*h*)—Power to make orders and issue warrants.
(*i*)—Limitatoin of certain powers.
(*j*)—Power to make rules.
(*k*)—Articles to be read periodically.

An Act to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

Preamble.

WHEREAS it is expedient to consolidate and amend the Articles of War for, the government of the Native Officers, Soldiers, and other persons in Her Majesty's Indian Army: It is hereby enacted as follows:—

PART I.—PRELIMINARY.

(*a*)—*Short Title.*

This Act may be called "The Indian Articles of War."

(*b*)—*Commencement of Act.*

This Act shall come into operation on the first day of June 1869.

(*c*)—*Repeal of Enactments.*

From such day the first section of Act No. XXV. of 1857 (*to render Officers and Solders in the Native Army liable to forfeiture of property for Mutiny and to provide for the adjudication and recovery of forfeitures of porperty in certain cases*), Act No. XXIX. of 1861 (*to consolidate and amend the Articles of War for the government of the Native Officers and Soldiers in Her Majesty's Indian Army*), Act No. V. of 1863 (*to amend Act XXIX. of* 1861), and Act No. XXVI. of 1865 (*to amend Act XXIX. of* 1861), shall be repealed:

Provided that all crimes and offences committed against any Articles of War repealed by this Act may be enquired into and punished in like manner as if they had been committed against the Articles of War contained in this Act, and that any warrant for holding Courts Martial, issued under any Act hereby repealed, shall remain in full force, notwithstanding such repeal:

Provided also that no proceedings in any trial begun under any Articles so repealed shall be discontinued owing to such repeal, but every such trial shall proceed and be completed in the same manner as if this Act had not been passed.

References to any Act hereby repealed or any Act passed subsequently thereto shall be read as if made to this Act.

(*d*)—*Application of Articles.*

The Articles contained in Part II. of this Act shall apply to all—

Commissioned Officers,
Sub-Assistant Surgeons,
Hospital Assistants,
Native Doctors,
Warrant Officers,
Non-Commissioned Officers,
Hospital Attendants of any class,
Trumpeters, Buglers, Drummers,
Musicians,
Soldiers,
Unattested Recruits,
Lascars, Mahouts, Drivers,
Farriers, Syces, Grass-cutters,
Artificers, Labourers,
Sutlers, Followers, whether public or private,

and all other persons attached to or serving with any portion of the said Army:

Proviso.

Provided that nothing in the said Part (other than Article 123) shall render any British-born subject of Her Majesty, or any legitimate Christian lineal descendant of such subject, whether in the paternal or maternal line, triable or punishable under the said Part, but all such persons belonging to Her Majesty's Indian Army shall be triable and punishable as if they belonged to Her Majesty's British Forces.

And that nothing in the said Part shall render any American or any Christian European not being British-born, or any Christian legitimate lineal descendant of such American or European, whether in the paternal or maternal line, triable by a Court Martial composed of Native Commissioned Officers; but all such persons belonging to Her Majesty's Indian Army shall be triable by Courts Martial composed of European Officers only. Save as aforesaid, such persons shall be subject to this Act as if they were Natives of British India.

(*e*)—*Interpretation Clause.*

In this Act, unless there be something repugnant in the subject or context—

"Army" means Her Majesty's Indian Army, and "service" means service in such Army:

"Commissioned Officer" includes all Officers holding Commissions in the Native ranks of the Army, whether they be of purely Native or of a mixed European and Native extraction:

"European Officers" includes all European Officers holding Commissions in such Army or in Her Majesty's British Army:

"Commanding Officer" or "Officer Commanding" means the European Officer in actual command for the time being of any Force, Division, District, Regiment, Corps, Detachment, or Depôt, as the case may be:

"Judge Advocate" includes any European Officer duly authorised to officiate as Judge Advocate:

"Court Martial" means a Court Martial held under this Act, and in Articles 67, 68, 69, and 123 shall include a Court Martial held under the Act for punishing mutiny and desertion, and for the better payment of the Army and their quarters for the time being in force:

"Soldier" and "Soldiers" include Non-Commissioned Officers and all armed persons doing duty in the ranks of the Army:

"Attested" means attested under the Articles contained in Part II. of this Act:

"Deserter" means a person subject to such Articles, who has deserted from the Army:

"Government" means in the case of the Madras Army, the Governor of Fort St. Saint George in Council, in the case of the Bombay Army, the Governor of Bombay in Council, and in the case of any other part of Her Majesty's Indian Army, the Governor General of India in Council;

And the expressions "assault," "criminal force," "dishonestly," "extortion," "fraudulently," "grievous hurt," "hurt," "theft," "voluntarily causes

hurt," "voluntarily causes grievous hurt," "reason to believe," wrongful gain" and "wrongful loss" shall be severally taken to have the meanings assigned to them respectively in the Indian Penal Code, and quoted in Part I. of the Appendix to this Act.

(f)—Saving of certain Regulations.

Nothing in this Act affects any regulations by which the respective offices and powers of Cantonment Magistrates, Commissariat Officers, Officers in charge of the Police in Cantonments, and Superintendents of Military Bazaars are defined and controlled, or by which Panchâyats are constituted and guided.

PART II.—THE ARTICLES OF WAR.

Title I.—Enlistment, Dismissal, and Discharge.

Chapter I.—*Enlistment.*

Articles to be read to Recruits.

Article 1.—Every person prior to being enrolled in any regiment or corps shall have the 7th, 8th, 9th, 10th, 11th, 24th, 38th, and 53rd of these Articles read and explained to him.

Affirmation.

When reported fit for duty, such declaration or charge shall be made to him, by the Officer Commanding, in front of the Regiment or Corps, or of such portion thereof as shall be present; and the person shall then make the following affirmation:—

"I , inhabitant of
"son of , solemnly affirm in the "presence of Almighty God that I will be faithful "to Her Majesty the Queen, Her heirs and suc-"cessors, and will go wherever I am ordered, by "land or sea, and will obey all commands of the "Officers set over me, even to the peril of my "life."

Attestation.

Article 2.—All persons of the following classes, hereafter enlisted or enrolled under these Articles, shall be attested according to the regulations of the Government to which they are respectively subject:—Sub-Assistant Surgeons, Hospital Assistants, Native Doctors, Warrant Officers of any Department, Trumpeters, Buglers, Drummers, Musicians, Soldiers, Lascars, Mahouts, Drivers, Farriers, Syces and Grass-cutters.

Articles 3, 4, 5, 7 to 71 (both inclusive), 90 to 94 (both inclusive), 130 to 139 (both inclusive), 154, 167, and 176 shall be read to every person enlisted or enrolled under these Articles at the time of his attestation,

Chapter II.—*Dismissal and Discharge.*

Dismissal of Commissioned Officers.

Article 3.—A Commissioned Officer shall be liable to dismissal from the service by the sentence of a General Court Martial, or by order of the Governor General of India in Council, or of the Commander-in-Chief of the Presidency to which he belongs, or if the Officer belongs to either of the Presidencies of Fort St. George or Bombay, of the Governor in Council, of such Presidency.

Every Commissioned Officer dismissed under these Articles shall forfeit all claim to pension.

Dismissal of other persons.

Article 4.—Any person subject to these Articles other than a Commissioned Officer shall be liable to dismissal from the service—

by the sentence of any Court Martial empowered to try him,

or by order of the Governor General of India in Council, or of the Commander-in-Chief, of the Presidency to which he belongs,

or if he belongs to either of the Presidencies of Fort St. George and Bombay, by order of the Governor in Council,

or if he belongs to a Force not attached to any such Presidency, by order of the Officer commanding such Force.

Every such person so dismissed shall forfeit all claim to pension.

Attested person dismissed and re-enlisting.

Article 5.—Every attested person of or below the rank of Non-Commissioned Officer who has been dismissed or discharged from the service, and who subsequently re-enters the service without at the time stating the fact of his dismissal or discharge, or showing his certificate of dismissal or discharge, may be dismissed the service by the Officer commanding the regiment or corps with which he is serving.

Certificate to person dismissed.

Article 6.—Every attested person who is dismissed or discharged from the service shall be furnished by his Commanding Officer with a certificate, in the English language and in the mother-tongue of such person (when his mother-tongue is not English), setting forth—

(*a*) the authority dismissing or discharging him,
(*b*) the cause of his dismissal or discharge, and
(*c*) the full period of his service in the Army.

Title II.—Military Offences.

Chapter I.—*Crimes punishable with Death or Transportation.*

Mutiny and Sedition.

Article 7.—Any person subject to these Articles:—

Who begins, excites, causes or joins in any mutiny or sedition in any regiment, corps, detachment, or guard,

or who, being present at any mutiny or sedition, does not use his utmost endeavours to suppress the same,

or who, knowing or having reason to believe in the existence of any mutiny, or of any intention to mutiny, or of any conspiracy against the State,

does not, without delay, give information thereof to his Commanding or other superior Officer;—or

Violence to superior.

Article 8.—Who uses or attempts to use criminal force to or commits an assault on his superior Officer, whether on or off duty, under any circumstances in which the superior Officer is distinguishable as such in any manner;—or

Disobedience.

Article 9.—Who disobeys the lawful command of his superior Officer;—or

Desertion.

Article 10.—Who deserts the service;—or

Re-enlistment without having been discharged.

Article 11.—Who without having first obtained a regular discharge from the regiment or corps to which be belongs, enlists or enrols himself in any other regiment or corps;—or

Sentry sleeping on or quitting post in time of war.

Article 12.—Who, being a sentry in time of war or alarm, or over any State-prisoner, treasure, magazine, or dockyard, sleeps upon his post, or quits it without being regularly relieved, or without leave;—or

Sentry plundering.

Article 13.—Who, being a sentry, or on guard, plunders or wilfully destroys or injures any property placed under his charge, or under charge of his guard;—or

Abandoning garrison.

Article 14.—Who shamefully abandons or delivers up any garrison, fortress, post or guard committed to his charge, or which it is his duty to defend;—or

Betraying watch-word.

Article 15.—Who treacherously makes known the watch-word to any person not entitled to receive it according to the rules and discipline of war;—or

Corresponding with enemy.

Article 16.—Who directly or indirectly holds correspondence with, or communicates intelligence to the enemy, or any person in arms against the State, or who, coming to the knowledge of any such correspondence or communication, omits to discover it immediately to his Commanding or other superior Officer;—or

Assisting enemy.

Article 17.—Who directly or indirectly assists or relieves with money, victuals, or ammunition, or knowingly harbours or protects any enemy, or person in arms against the State;—or

Releasing prisoners.

Article 18.—Who, without proper authority, releases any State prisoner, enemy, or person taken in arms against the State, placed under his charge, or who negligently suffers any such prisoner, enemy, or person to escape;—or

Misbehaviour in presence of enemy.

Article 19.—Who, in presence of an enemy, or of any persons in arms against whom it is his duty to act, shamefully casts away his arms or ammunition, intentionally use words or any other means to induce any officer or Solder to abstain from acting against the enemy or to discourage such officer or Soldier from acting against the enemy, or otherwise misbehaves;—or

Seeking plunder during action.

Article 20.—Who in time of action, without authority, leaves his Commanding Officer, or his post, or colours, or party to go in search of plunder;—or

Quitting guard in time of war.

Article 21.—Who in time of war quits his guard, picquet, party, or patrol, without being regularly relieved or without leave;—or

Assaulting persons bringing provisions.

Article 22.—Who in time of war, or during any military operation, uses criminal force to or commits an assault on any person bringing provisions or other necessaries to the camp or quarters of any of Her Majesty's forces,

or forces a safeguard, or without authority breaks into any house or other place for plunder, or plunders, injures, or destroys any field, garden, or other property of any kind;—or

Causing false alarm in time of war.

Article 23.—Who in time of war, or during any military operation, intentionally occasions a false alarm in action, camp, garrison, or quarters or spreads reports by words or by letters calculated to create alarm or despondency;

Punishment for the foregoing offences.

Article 24.—Shall, on conviction, suffer death, or transportation for life or for a term of not less than seven years,

or imprisonment (with or without hard labour and with or without solitary confinement) for a term which may extend to fourteen years.

or such other punishment as a General Court Martial is, by these Articles, empowered to award.

Whenever any person is convicted under this section of an offence punishable with death, all his property, moveable and immoveable, shall be forfeited to Government.

CHAPTER II.—*Crimes punishable otherwise than by Deaths or Transportation.*

Unbecoming behaviour.

Article 25.—Any Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer,

who behaves in a manner unbecoming his position and character;—and

Intoxication on duty.

Article 26.—Any person subject to these Articles, who is in a state of intoxication when on or for any duty, or on parade, or on the line of march;—or

Striking sentry.

Article 27.—Who strikes, or forces or attempts to force any sentry;—or

Harbouring deserter.

Article 28.—Who knowingly harbours any deserter, or who, knowing or having reason to believe that any other person has deserted, or that any deserter has been harboured by any other person, does not immediately give notice to his own or some other superior Officer, or use his utmost endeavours to cause such deserter to be apprehended;—or

Enlisting deserter.

Article 29.—Who knowing or having reason to believe that a person is a deserter enlists him;—or

Absence without leave.

Article 30.—Who absents himself without leave, or, without sufficient cause, overstays leave granted to him;—or

Failure to rejoin.

Article 31.—Who, being on leave of absence and having received information from proper authority that his regiment or corps has been ordered on service, fails without sufficient cause, to rejoin without delay;—or

Failure to attend parade.

Article 32.—Who, without sufficient cause, fails to appear at the time fixed at the parade or place appointed for exercise or duty;—or

Quitting parade or division.

Article 33.—Who, when on parade, or on the line of march, without sufficient cause, or without leave from his superior Officer, quits the parade or line of March;—or

Quitting guard in time of peace.

Article 34.—Who, in time of peace, quits his guard, picquet, or partrol, without being regularly relieved, or without leave;—or

Refusing to receive or releasing prisoners.

Article 35.—Who, being in command of a guard, picquet, or patrol, refuses to receive any prisoner duly committed to his charge, or without proper authority releases any prisoner or negligently suffers any prisoner to escape;—or

Leaving arrest.

Article 36.—Who, being under arrest, or in confinement, leaves his arrest or confinement before he is set at liberty by proper authority;—or

Insubordination.

Article 37.—Who is grossly insubordinate or insolent to his superior Officer in the execution of his office;—or

Refusal to superintend military work.

Article 38.—Who refuses to superintend or assist in the making of any field-work, or other military work of any description, ordered to be made either in quarters or in the field;—or

Impeding Provost Marshal.

Article 39.—Who impedes a Provost Marshal or an Assistant Provost Marshal, or any person lawfully exercising authority, or refuses when called upon to assist such person when requiring aid in the execution of his duty;—or

Striking subordinates.

Article 40.—Who strikes or otherwise ill-treats any soldier or other person attested under these Articles, being his subordinate in rank or position;—or

Extortion.

Article 41.—Who commits extortion, or without proper authority exacts from any person carriage, porterage, or provisions;—or

House-breaking or plundering in time of peace.

Article 42.—Who, in time of peace, commits house-breaking for the purpose of plundering, or plunders, destroys, or damages any field, garden, or other property;—or

Neglecting to compensate person injured by subordinate.

Article 43.—Who, being in command at any post, or on the march, and receiving a complaint that any one under his command has beaten, or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person, or to report the case to the proper authority;—or

Defiling places of worship.

Article 44.—Who by defiling any place of worship or otherwise, intentionally insults the religion or wounds the religious feelings of any person;—or

Taking bribes.

Article 45.—Who directly or indirectly requires, accepts, or obtains, or agrees to accept, or attempts to obtain for himself or for any other person any gratification as a motive or reward for procuring the enlistment or enrolment of any person, or leave of absence, promotion, or any other advantage or indulgence for any person in the service;—or

Causing false alarm in time of peace.

Article 46.—Who in time of peace, by any means whatever, intentionally occasions a false alarm in camp, garrison, or cantonment;—or

Making away with regimental necessaries.

Article 47.—Who designedly or through neglect kills, injures, or loses his horse, or who dishonestly or fraudulently removes, conceals, or delivers to any person, or who designedly or through neglect injures or loses his arms, clothes, tools, musical or surgical instruments, equipments, ammunition, accoutrements, or regimental necessaries, or any such articles entrusted to him, or belonging to any other person,

or who sells, pawns, destroys, or defaces any medal or decoration granted to him by order of Her Majesty, or of the East India Company, or of the Governor General of India in Council for service in the field, or for generat good conduct;—or

Attempting suicide.

Article 48.—Who attempts to commit suicide, and does any act towards the commission of such offence;—and

Appearing armed in camp.

Article 49.—Any person subject to these Articles below the rank of Warrant Officer—

Who, when off duty, appears without proper authority in or about camp or cantonments, or in or about, or when going to, or returning from, any town or bazaar, carrying a sword, bludgeon, or other offensive weapon;—or

Sentry sleeping on post in time of peace.

Article 50.—Who, being a sentry, in time of peace, sleeps upon his post, or leaves it before being regularly relieved, or without leave;—or

Absence from camp.

Article 51.—Who, without proper authority, is found two miles or upwards from camp;—or

Absence from cantonment after tattoo.

Article 52.—Who, without proper authority, is absent from his cantonment or lines after tattoo, or from camp after retreat-beating;

Punishment for offences mentioned in Articles 25—52.

Article 53.—Shall, on conviction by any Court Martial competent to try him, be sentenced to such punishment, other than death or transportation, as such Court is by these Articles empowered to award.

CHAPTER III.—*Crimes to be punished with dismissal from the service.*

Embezzlement.

Article 54.—Any person subject to these Articles—

Who dishonestly misappropriates or converts to his own use any money, provisions, forage, arms, clothing, ammunition, tools, instruments, equipments or military stores of any kind, the property of Government, entrusted to his charge on the public account, or for any military purpose,

or who dishonestly uses or disposes of such property in violation of any direction of a proper authority,

or who dishonestly receives or retains any such property, knowing or having reason to believe the same to have been dishonestly misappropriated or converted;—or

Destruction of Government property.

Article 55.—Who wilfully destroys or injures any property of Government entrusted to him on the public account, or for any military purpose;—or

Giving false evidence.

Article 56.—Who, having been duly sworn or affirmed before any Court Martial, or other Military Court competent to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true;—

Punishment for offences mentioned in Articles 54, 55, 56.

Article 57.—Shall, if convicted by a General Court Martial, be sentenced to be dismissed the service, and to forfeit any arrears of pay and allowances due to him at the time of dismissal; and shall be punishable also with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to three years: and shall, if convicted by a District or Garrison Court Martial, be liable to any or all of the penalties which such Court may inflict for disgraceful conduct.

CHAPTER IV.—*Disgraceful Conduct.*

Malingering.

Article 58.—Any person subject to these Articles—

Who malingers or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity;—or

Wilfully causing hurt.

Article 59.—Who, with intent to render himself or any other person, unfit for service, voluntarily causes hurt or voluntarily cause grievous hurt to himself or any other person;—or

Theft.

Article 60.—Who commits theft in respect of any property of Government, or of any Officer or soldier, or of any other person in the service, or of any military mess or band, or of any person serving with or attached to the Army, or who dishonestly receives or retains any such property, knowing or having reason to believe it to be stolen;—or

Embezzlement of Government property not entrusted on public account.

Article 61.—Who dishonestly misappropriates or converts to his own use any property of Government entrusted to him for any purpose not provided for in Articles 54 and 55,

or who dishonestly receives or retains any such property knowing or having reason to believe it to have been dishonestly misappropriated or converted;—or

Obtaining pension by false statement.

Article 62.—Who obtains or attempts to obtain for himself, or for any other person, any pension, allowance, or other advantage or privilege by a statement which is false and which he knows or has reason to believe to be false or does not know to be true, or by making or using a false entry in any book or record, or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;—or

Furnishing false returns.

Article 63.—Who knowingly furnishes false return or report of the number or state of any men under his command or charge, or of any money, arms, ammunition, clothing, equipments, stores, or other property in his charge, whether belonging to such men, or to Government, or to any person in or attached to the Army, or who through design or culpable neglect omits or refuses to make or send any such return or report;—or

Other fraudulent offences.

Article 64.—Who does any other thing with intent to defraud, or to cause wrongful gain to one person, or wrongful loss to another person;—or

Cruelty or Indecency.

Article 65.—Who commits any other offence of a cruel, indecent, or unnatural kind, or attempts to commit any such offence and does any act towards its commission.

Penalties for offences specified in Articles 58—65.

Article 66.—May be tried for disgraceful conduct, and shall, on conviction by a General, District, or Garrison Court Martial, be liable to any or all of the penalties awardable by such Court for disgraceful conduct.

CHAPTER V.—*Offences against Courts Martial.*

Refusal to attend or be sworn.

Article 67.—Any person subject to these Articles who, when duly summoned to attend as a witness before a Court Martial, intentionally omits to attend, or prevaricates or refuses to be sworn or make affirmation, or to answer any question, or to produce or deliver up any book or document which he may have been duly warned and called upon to produce or deliver up;—or

Contempts.

Article 68.—Who intentionally offers any insult or causes any interruption or disturbance to, or uses any menacing or disrespectful word, sign, or gesture, or is insubordinate or violent in the presence of a Court Martial while sitting;—

Punishment for offences specified in Articles 67 *and* 68.

Article 69.—Shall, on conviction by the same or by any other Court Martial, which is compe-

tent to try the offender, be liable to such punishments as the convicting Court is, by these Articles, empowered to award.

CHAPTER VI.—*Unspecified Offences.*

Article 70.—All offences not punishable with death, all neglects to obey any garrison or other orders, and all acts and omissions, of which any person subject to these Articles is accused, shall, though not specified in these Articles, if they be prejudicial to good order and military discipline, be taken cognizance of and punished according to the nature and degree of the offence, act, or omission by any Court Martial empowered to try the person guilty of such offence, act, or omission.

Abetment.

Article 71.—Every person subject to these Articles who abets, within the meaning of the Indian Penal Code, sections 107 and 108, any of the offences specified in Articles 7, 8, 10, 13, 14, 18, and 19, may be punished with the punishment hereinbefore provided for such offence.

Every such person who abets within the meaning of the Indian Penal Code, sections 107 and 108, any other offence punishable under this Act, shall be punished

with imprisonment of any description provided by this Act for the offence so abetted for a term which may extend to one-half of the longest term of such imprisonment,

or with one-half of any other penalty awardable by the Court by which he is convicted,

or, if the offence is punishable with death or transportation for life, with transportation for a term not less than seven years or with imprisonment (with or without hard labour, and with or without solitary confinement) for a term which may extend to ten years.

The said sections of the Indian Penal Code are set forth in Part II. of the Appendix to this Act.

TITLE III.—JURISDICTION.

CHAPTER I.—*Courts Martial.*

Kinds of Courts Martial.

Article 72.—For the purposes of these Articles, there shall be eight kinds of Courts Martial (that is to say)—

(1)—General Courts Martial,
(2)—Detachment General Courts Martial,
(3)—District Courts Martial,
(4)—Garrison Courts Martial.
(5)—Regimental Courts Martial.
(6)—Regimental Detachment Courts Martial,
(7)—Detachment Courts Martial, and
(8)—Summary Courts Martial.

(1)—*General Court Martial.*

Appointment of General Court Martial.

Article 73.—A General Court Martial may be appointed—

(*a*)—By the Commander-in-Chief of a Presidency.

(*b*)—By any Officer authorized to appoint General Courts Martial by warrant of the Commander-in-Chief of a Presidency:

(*c*)—By any Officer in actual command of Native troops who is authorised to appoint General Courts Martial by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council:—

(*d*)—By any Officer commanding Native troops not attached to the forces of a Presidency who is authorized to appoint General Courts Martial by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

Composition of such Court.

Article 74.—Except as hereinafter provided every General Court Martial shall, if held in British India shall consist of not less than nine Commissioned Officers, but may, if held out of British India, consist of seven Commissioned Officers, if a greater number cannot be conveniently assembled.

Composition of such Court appointed under orders in Council.

Article 75.—A General Court Martial appointed under the authority of an order in Council shall consist of not less than five Commissioned Officers, and shall, if so provided in the order, be composed either of European or of Native Commissioned Officers at the discretion of the Officer appointing it.

Powers of such Court.

Article 76.—A General Court Martial shall have power to try all persons subject to these Articles accused of mutiny or of any other offence punishable under this Act, and to pass sentences of Death,

Transportation for life or for any period not less than seven years,

Imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years,

Dismissal from the service,

Suspension from rank, pay, and allowances for any stated period,

Degradation,

Loss of standing,

Reduction to the ranks,

Corporal punishment not exceeding fifty lashes,

Forfeiture of additional pay, good conduct pay, and claim to pension,

Forfeiture of arrears of pay and allowances,

Stoppages.

Whenever any person is convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that all the rents and profits of his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

(2)—*Detachment General Court Martial.*

Appointment of such Court Martial.

Article 77.—When any portion of Her Majesty's troops is serving in any place not in British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty, wherein Her Majest'y forces are permanently

stationed, a Detachment General Court Martial may be appointed:—

(*a*)—By the Commander-in-Chief of a Presidency:

(*b*)—By any Officer authorized to appoint Detachment General Courts Martial by warrant of the Commander-in-Chief of a Presidency;

(*c*)—By the Officer in actual command of such troops, upon complaint being made of an offence against the person or property of any resident of such place, committed by any person under such Officer's command and subject to these Articles.

Its Composition and Powers.

Article 78.—Such Court Martial shall consist of not less than three Commissioned Officers, and shall have the same powers as a General Court Martial.

(3)—*District Court Martial, and*

(4)—*Garrison Court Martial.*

Appointment of such Courts.

Article 79.—A District or Garrison Court Martial may be appointed—

(*a*)—By the Commander-in-Chief of any Presidency:

(*b*)—By any Officer authorized to appoint District or Garrison Courts Martial (as the case may be) by warrant of the Commander-in-Chief of any Presidency:

(*c*)—By any Officer in actual command of Native troops authorized to appoint District or Garrison Courts Martial (as the case may be) by order of the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council:

(*d*)—By any Officer commanding Native troops not attached to the forces of a Presidency authorized to appoint District or Garrison Courts Martial (as the case may be) by warrant which the Governor General of India in Council has empowered the Commander-in-Chief in India to issue.

Composition of such Courts.

Article 80.—(*a*) Except as hereinafter provided, a District or Garrison Court Martial shall consist of seven Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than five such Officers.

(*b*) A District Court Martial appointed under the authority of an order in Council, may consist of any number of Commissioned Officers not less than three; and may, if so provided in the order, be composed either of European or of Native Commissioned Officers at the discretion of the Officer appointing it.

Officers composing such Courts.

Article 81.—A District or Garrison Court Martial may, when necessary, be composed wholly of Officers of the regiment or corps to which the accused belongs: Provided that on the trial of a Sub-Assistant Surgeon, Hospital Assistant, Native Doctor or Warrant Officer, not more than two Officers of the same regiment, corps, detachment, depôt or department as the accused shall sit upon any such Court.

Powers of such Courts.

Article 82.—A District or Garrison Court Martial shall have power to try all persons subject to these Articles, other than Commissioned Officers, for any offence other than mutiny made punishable by these Articles, and to pass sentences of—

Imprisonment (with or without hard labour, and with or without solitary confinement) for a term not exceeding one year,
Dismissal from the service,
Suspension from rank, pay, and allowances,
Degradation,
Loss of standing,
Reduction to the ranks,
Corporal punishment not exceeding fifty lashes,
Forfeiture of additional pay, good-conduct pay, and claim to pension,
Forfeiture of arrears of pay and allowances,
Stoppages.

(5)—*Regimental Court Martial.*

Appointment of such Court.

Article 83.—A Regimental Court Martial may be appointed by the Officer commanding any regiment or corps.

Composition of such Court.

Article 84.—A Regimental Court Martial shall consist of not less than five Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three such Officers.

Powers of such Court.

Article 85.—A Regimental Court Martial shall have power to try—

(*a*)—All persons subject to these Articles, other than Commissioned Officers, Sub-Assistant Surgeons, Hospital Assistants, Native Doctors and Warrant Officers, for any offence other than mutiny, desertion, or disgraceful conduct, punishable under these Articles, when committed on the line of march, or on board any vessel.

(*b*)—Any offence punishable under this Act, and not within the ordinary jurisdiction of a Regimental Court Martial, other than mutiny, desertion, and disgraceful conduct, when the Officer commanding the Division or District directs it to be tried by a Regimental Court Martial; and

(*c*)—Any offence punishable under these Articles, other than offences not within the ordinary jurisdiction of a Regimental Court Martial—

and to pass sentences of—
Dismissal,
Loss of standing,
Reduction to the ranks,
Imprisonment (with or without hard labour and with or without solitary confinement) for a term not exceeding six months,
Corporal punishment not exceeding fifty lashes,
Forfeiture of arrears of pay and allowances,
Stoppages.

(6)—*Regimental Detachment Court Martial, and*
(7)—*Detachment Court Martial.*

Appointment of Regimental Detachment Court Martial.

Article 86.—A Regimental Detachment Court Martial may be appointed by the Officer commanding a detachment of his own regiment or corps.

Appointment of Detachment Court Martial.

Article 87.—A Detachment Court Martial may be appointed—

(*a*)—By the Officer commanding any Station, Force, or Detachment of men of different regiments or corps;

(*b*)—By the Officer in command of any detachment when any offence not within the ordinary jurisdiction of a Regimental Court Martial (other than mutiny, desertion, or disgraceful conduct), is committed on the line of march, or on board any vessel.

Composition of such Courts.

Article 88.—A Regimental Detachment Court Martial and a Detachment Court Martial shall consist of not less than five Commissioned Officers, unless that number cannot conveniently be assembled, in which case such Court may consist of not less than three Commissioned Officers.

Powers of such Courts.

Article 89.—A Regimental Detachment Court Martial and a Detachment Court Martial shall have the same powers as a Regimental Court Martial.

(8)—*Summary Courts Martial.*

Article 90. (*a*).—Subject to the provisions and restrictions contained in Articles 91, 92, 93, 94, 125 and 126, a Summary Court Martial may be held by the European Commissioned Officer who is in actual command, for the time being, of any regiment or corps,

or of any detachment consisting of or equivalent in strength to three troops or companies,

or of any European corps or detachment to which Native details subject to these Articles are attached,

or who is in charge of any arsenal, ordnance establishment, or camp equipage depôt.

(*b*)—In detached situations, beyond sea, or out of British India, or on service in the field, or under any circumstances where immediate example being necessary, a Detachment Court Martial cannot be assembled as provided in Article 87, and reference cannot be made to superior authority without detriment to the service, a Summary Court Martial may be held by the European Commissioned Officer commanding a detachment of any strength:

Provided that if the Officer is of less than five years' standing, he shall not carry into effect any sentence by such Court Martial, until it has received the approval of the nearest superior Military Officer holding a command of not less than a regiment.

Constitution of such Courts.

Article 91.—At every Summary Court Martial the Commanding Officer holding it shall alone constitute the Court.

Persons triable by such Court.

Article 92.—No Commanding Officer shall have power to try by a Summary Court Martial any Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer, or any person who is not liable to trial by Courts composed of Native Commissioned Officers; but all other persons subject to these Articles shall be liable to trial and punishment by a Summary Court Martial:

Provided that no person shall be so tried unless he is under the command of the Officer holding the trial.

Offences triable by such Court.

Article 93.—Any offence against these Articles, except mutiny, may be tried and punished by Summary Court Martial:

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a Commanding Officer shall not try by Summary Court Martial, without such reference, any of the following offences:—

Offences under Articles 7 to 23 both inclusive, ordinarily punishable by General Court Martial only:

Disgraceful offences under Articles 54, 55, 56, 60, 61, and 64; and

Offences against such Commanding Officer.

Its powers.

Article 94.—A Summary Court Martial held by any Officer commanding a regiment or corps may award any sentence not exceeding that awardable by a District Court Martial.

A Summary Court Martial held by any Commanding Officer other than the Officer commanding a regiment or corps, may award any sentence not exceeding that awardable by a Regimental or Detachment Court Martial.

Trial of grave offences by inferior Courts.

Article 95.—Save as provided by Articles 85, clauses (*a*) and (*b*) and Article 89, no Commanding Officer shall try by a Regimental or Detachment Court Martial offences which are by these Articles declared to be punishable by a General, District, or Garrison Court Martial only. But, as it may be expedient that some such offences should be tried by inferior Courts Martial, the Commanding Officer of any Regiment, Corps, or Detachment shall, in every such instance, submit the case for the orders of the Officer commanding the Division or District in which he is serving, and the Officer commanding such Division or District, whether on or without such application, may direct trial by such kind of Court Martial as he thinks fit:

Provided that mutiny shall in no case be tried save by a General Court Martial, and that desertion and disgraceful conduct shall in no case be tried by any Court Martial inferior to a District or Garrison Court Martial.

The permission to try grave offences by District or Garrison, Regimental or Detachment Courts Martial, shall be entered upon the proceedings of such Court, and in the monthly return of trials furnished to Army Head Quarters.

Courts composed of European Officers.

Article 96.—The Governor General of India, or the Governor of any Presidency, may, by an order in Council, direct that any Court Martial appointed under these Articles, shall be composed of European instead of Native Commissioned Officers or authorize any General or other Officer to appoint Courts Martial so composed at his discretion.

Any such Court Martial shall in such case be constituted accordingly, but shall in all other respects be governed by these Articles.

Claim to be tried by European Officers.

Article 97.—With the exception of cases of trial by Courts Martial appointed under orders in Council, every person subject to these Articles, who is under orders for trial by Court Martial, may claim to be tried by European Officers.

When any such claim is made, the Court, whether a General, District, Garrison, Regimental, or Detachment Court Martial, shall be composed of European instead of Native Commissioned Officers; but shall in all other respects be governed by these Articles.

CHAPTER II.—*Procedure.*

Limitation of trials.

Article 98.—No person subject to these Articles shall be tried or punished by a Court Martial for any military offence after the expiration of three years from the date of such offence, unless the offender, by reason of absence or of some other manifest impediment, could not be arrested or confined and brought to trial within that period; in which case he shall be liable to be tried at any time not exceeding two years after such impediment shall have ceased.

Place of trial.

Article 99.—Any person subject to these Articles who commits any offence against them, may be tried and punished for such offence in any place whatever in the same manner as if the offence had been committed in such place.

Arrest or confinement of accused.

Article 100.—Whenever any person subject to these Articles is accused of any military offence which his Commanding or other superior Officer considers should be tried by Court Martial, such Officer shall order the accused, if not below the rank of Non-Commissioned Officer, to be placed in arrest, or if below such rank, to be put in confinement, until he can be tried by a Court Martial or discharged by proper authority.

No such person shall be detained in arrest or confinement longer than is necessary for the purposes of justice.

Judge Advocate.

Article 101.—It shall not be necessary to appoint a Judge Advocate to any General Court Martial appointed under the authority of an order in Council. But every other General Court Martial shall be attended by a Judge Advocate, who shall conduct the proceedings; and every District or Garrison, Regimental, or Detachment Court Martial, composed of Native Commissioned Officers, shall be attended by an European Superintending Officer of not less than four years' service who shall conduct the proceedings.

Interpreter.

Article 102.—An Interpreter shall be appointed to every Court Martial, and shall, when the Court is composed of Native Officers, form part of such Court.

If no duly qualified Interpreter is available at the station or place where the Court Martial sits, the Officer appointing the Court, or the Officer Commanding in the Division, District, or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of Interpreter.

When no other qualified or competent person is available, the Superintending Officer, or, in the case of an European Court, the President shall perform the duty of Interpreter.

No Interpreter shall as such have a vote upon any matter.

President.

Article 103.—At every Court Martial, whether composed of European or Native Commissioned Officers, the senior Officer shall sit as President, without special appointment as such.

In case of the death or unavoidable absence of the President, the next senior member shall take the place of President, without special appointment as such, and the trial shall proceed if the Court be still composed of the smallest number of members of which it is required by these Articles to consist.

Conduct of proceedings.

Article 104.—In the case of any General Court Martial appointed under an order in Council, or of any other Court Martial composed of European Commissioned Officers under Article 96 or 97, the President shall conduct the proceedings.

Precedence of Native Officers.

Article 105.—Risáldár Majors and Súbahdár Majors shall take precedence according to the dates of their commissions, and above all Súbahdárs or Risáldárs.

Sirdár Bahádurs and Bahádurs shall take rank only according to their respective commissions of Risáldár Major, Súbahdár Major, Risáldár, Risáidár, Súbahdár, or Jemadár.

Risáldárs shall take rank with Súbahdárs, according to the dates of their commissions as Risáidárs, or if they have not been Risaidárs, then according to the dates of their commissions as Risáldárs.

Time of trial, Adjournment, and Re-assembly.

Article 106.—Trials by Courts Martial may be carried on at any time without restriction.

The date and hour of the Court's original assembly shall be fixed by, or under the orders of, the convening Officer; but the adjournment and re-assembly of a Court Martial shall be determined by the Court itself.

Challenges.

Article 107.—At all trials by Courts Martial, other than Courts Martial appointed under an order in Council or Summary Courts Martial, as soon as the Court is assembled, the names of the President and members shall be read over to the prisoner, who shall thereupon be asked by the Officer conducting the proceedings, whether he objects to being tried by any Officer sitting on the Court.

If the prisoner objects to any such Officer, his objection and also the reply thereto of the Officer objected to, shall be heard and recorded, and the remaining Officers of the Court shall, in the absence of the challenged Officer, decide on the objection.

When no challenge is made, or when challenge has been made and disallowed, or the place of every Officer successfully challenged has been filled by another Officer to whom no objection is made or admitted, the Court shall proceed as hereinafter provided.

Interpreter's oath.

Article 108.—The Officer conducting the proceedings shall then administer to the Interpreter, or, when necessary, shall himself make as Interpreter, an affirmation or oath as follows:—

"I solemnly affirm, in the presence "of Almighty God, that I will faithfully interpret "and translate the proceedings of this Court; and "that I will not divulge the sentence until it shall "have been published by authority; and, further, "that I will not disclose or discover the vote or "opinion of any particular member of the Court "unless required to give evidence thereof by a "Court of Justice or Court Martial, in due course "of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will faithfully interpret," &c., and shall be in all other respects in the above form, and shall end with the words, "So help me God."

Oaths of President and Members.

Article 109.—The Interpreter, or the Officer conducting the proceedings, shall then administer to the President and each of the Members of the Court Martial an affirmation or oath in such of the following forms as shall be appropriate:—

For European Officers.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Articles of War, without partiality, favour, or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the Court until it shall be published by authority; and, further, that I will not disclose or discover the vote or opinion of any particular member of the Court, unless required to give evidence thereof by a Court of Justice or a Court Martial, in due course of law."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will duly administer justice," &c., and shall be in all other respects in the above form, and shall end with the words "So help me God."

For Native Officers of the Mussulman or Hindú religion, or of any other religion for which it may be appropriate.

"I solemnly affirm, in the presence of Almighty God, that I will duly administer justice, according to the Indian Articles of War, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the Court until it shall be published by authority; and further, that I will not disclose or discover the vote or opinion of any particular member of the Court, unless required to give evidence thereof by a Court of Justice or a Court Martial, in due course of law."

Judge Advocate's oath.

Article 110.—The Interpreter, or any other European Officer of the Court, shall then administer to the Judge Advocate, or Superintending Officer, the following affirmation or the following oath:—

"I solemnly affirm, in the presence of Almighty God, that I will not, upon any account whatsoever, disclose or discover the vote or opinion of any particular member of the Court Martial, unless required to give evidence thereof as a witness by a Court of Justice or a Court Martial, in due course of law; and that I will not, unless it be necessary for the due discharge of my official duties, disclose the sentence of the Court until it shall be published by authority."

When oath is made instead of affirmation, the oath shall commence—

"I do swear that I will not, upon any account whatsoever, disclose," &c., and shall be in all other respects in the above form, and shall end with the words "So help me God."

Oaths of Witnesses.

Article 111.—Every person giving evidence at a Court Martial shall be examined on oath, or on affirmation, where affirmation is appropriate and admissible, and shall be duly sworn or affirmed in such of the following forms as may be appropriate:—

For Europeans and persons professing the Christian religion.

"I do swear that what I shall state shall be the truth, the whole truth, and nothing but the truth." So help me God.

or,

"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."

For Mussulman, Hindú, or other Native Witnesses.

"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."

Oaths to be binding on conscience.

Article 112.—If none of the forms of oath or affirmation prescribed in Articles 108 to 111, both inclusive, are appropriate to any officer of a Court Martial or any witness, such officer or witness shall make oath or affirmation to the purport hereinbefore prescribed, in such form as the Court ascertains to be according to his religion or otherwise binding on his conscience.

Re-swearing in case of several trials.

Article 113.—When more trials than one are held by the same Court Martial, every Officer of the Court and every witness before the Court, shall make a fresh oath or affirmation, as hereinbefore prescribed, notwithstanding any previous oath or affirmation.

Presumptive evidence of desertion.

Article 114.—If at any trial for desertion it is proved that the person tried has been absent without authority for the space of two months, such proof shall be deemed sufficient presumptive evidence of desertion; and the Court may thereupon convict the prisoner of desertion, unless he proves that his absence was not wilful, or otherwise rebuts the presumption of desertion arising from the proof of his unauthorized absence.

Reference by prisoner to Government Officer.

Article 115.—If at any trial for desertion, absence without leave, overstaying leave, or not rejoining when warned for service, the person tried states, in his defence, any sufficient or reasonable excuse for his unauthorized absence and refers in support thereof to any Officer in the Civil or Military service of Government, or if it appears that any such Officer is likely to prove or disprove the said statement in the defence, the Court shall address such Officer, and adjourn until his reply is received.

The written reply of any Officer so referred to shall if signed by him be received in evidence, and have the same effect as if made on oath or affirmation before the Court.

If the Court is dissolved before the receipt of such reply, or if the Court omits to comply with the provisions of this Article, the convening Officer may, at his discretion, annul the proceedings and order a fresh trial by the same or another Court Martial.

Trial for desertion.

Article 116.—On any trial for desertion the accused may be found guilty either of desertion or of absence without leave.

Evidence of previous convictions and general character.

Article 117.—When any person subject to these Articles has been convicted by a Court Martial of any military offence, such Court Martial shall enquire into and receive and record evidence of any previous convictions of such person, either by a Court Martial, or by a Court of Justice; and shall further, in the case of any person below the rank of a Warrant officer, inquire into and record the general character of such person.

Evidence received under this Article may be either oral, or in the shape of entries in, or certified extracts from the Court Martial Books; and it shall not be necessary to prove the signature to such certified extract, nor shall it be necessary to give notice to the prisoner before trial that evidence as to his previous convictions or character will be received.

Voting of Members.

Article 118.—The members of a Court Martial shall preserve order; and in giving their votes upon any matter, shall begin with the junior in rank.

Except where otherwise specially provided, every decision shall be passed by a majority of votes; and where there is an equality of votes, as to either finding or sentence, the decision shall be in favour of the prisoner.

In matters other than the finding or sentence, the President shall have a casting vote.

Majority requisite to sentence of death.

Article 119.—No sentence of death shall be passed by any General Court Martial, other than a General Court Martial held under an order in Council, unless such sentence is concurred in by at least two-thirds of the officers composing the Court, or by five out of seven, or four out of five officers, when the Court consists of either of those numbers.

A General Court Martial held under an order in Council may by the votes of a majority of such Court, pass a sentence of death.

Revision of finding or sentence.

Article 120.—The finding or sentence of any Court Martial may be revised by order of the Officer authorized to dispose of the proceedings.

But no finding or sentence of a Court Martial shall be revised more than once; nor shall any evidence, save evidence as to previous convictions or general character, be received on a revision.

The Court, on revision, shall consist of the same, and the same number of Officers as were present when the original decision was passed, unless any such Officer or Officers shall be unavoidably absent.

In case of such unavoidable absence, the cause thereof shall be duly certified in the proceedings, and the Court shall proceed with the revision, provided it still consists of the smallest number of Officers of which such Court is by these Articles required to consist.

Procedure to be generally followed.

Article 121.—The procedure laid down in the Articles 106 to 119 (both inclusive) shall be adopted at all trials by Courts Martial, save when otherwise specially orderd or provided.

Summoning witnesses.

Article 122.—The Judge Advocate, in the case of a General Court Martial, and the Officer ordering the trial in the case of any other Court Martial may, by summons under his hand, require the attendance before the Court at a time and place to be mentioned in the summons, of any person either to give evidence or to produce documents.

In the case of a witness amenable to military authority, the summons shall be sent to the Officer in actual command of the corps to which he belongs, and such Officer shall serve it upon him accordingly.

In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be, or resides, and such Magistrate shall give effect to the summons as if the witness were required in the Court of such Magistrate.

When a witness is required to produce any particular document in his possession or power, the summons shall describe it with convenient certainty.

Contempts of Courts.

Article 123.—Any witness duly summoned, or any other person who commits any contempt of Court in the presence of a Court Martial, or who commits any of the offences described in Articles 56, 67, or 68, shall, if subject to these Articles, be proceeded against as they direct, and shall, if not so subject, be delivered over to a Magistrate, who shall proceed against the offender in the same manner as if the offence had been committed before or towards a Court of Criminal Justice.

Privilege of witnesses.

Article 124.—Every witness, while proceeding to, attending on, or returning from, any Court Martial before which he has been summoned, shall

be privileged from arrest in any civil suit or proceeding; and if arrested in any such suit or proceeding, may be discharged by order of such Court Martial.

SUMMARY COURTS MARTIAL.

Persons to attend Summary Court Martial.

Article 125.—Every Summary Court Martial shall be attended by two Commissioned Officers, European or Native, exclusive of the Commanding Officer holding the trial.

An Interpreter shall, in every case, attend at a Summary Court Martial; but when no other competent Interpreter is available, the Officer holding the trial, or one of the Officers in attendance thereat, may perform the duty of Interpreter.

No Interpreter shall as such have a vote upon any matter.

Proceedings of such Courts.

Article 126.—The proceedings of every Summary Court Martial shall be conducted in presence of all the Officers specified in Article 125, and shall be recorded in the English language in the manner usual at other Courts Martial.

Oaths of Interpreter and Officer holding trial.

Article 127.—The Interpreter at a Summary Court Martial shall first make oath or affirmation, as provided by Article 108, down to the words "published by authority;" and the Commanding Officer holding the trial shall then make oath or affirmation, as provided in Article 109, down to the words "custom of war in the like cases."

The Officers in attendance shall not as such be sworn or affirmed.

Evidence.

Article 128.—All evidence at a Summary Court Martial shall be taken on oath or affirmation, as provided by Article 111.

Any previous convictions on record against the offender, and his general character, shall be recorded by the Commanding Officer, as of his own knowledge, or proved as provided by Article 117.

Signature and transmission of proceedings.

Article 129.—The proceedings in every case in which a Regimental Court Martial or a Detachment Court Martial tries an offence not within the ordinary jurisdiction of a Regimental Court Martial, committed on the line of march or on board a vessel, shall be sent for the information of the Commander-in-Chief of the Presidency to which the Regiment or Detachment belongs, and of the Presidency within which they may be, or to which they are proceeding.

The proceedings of every Summary Court Martial shall, when closed, be signed by the Commanding Officer, and the Officers attending the trial, and shall, without delay, be forwarded to the Officer commanding the Division or District within which the trial was held; and such Officer, or the Commander-in-Chief in India or of the Presidency in which the trial was held, is hereby authorized to set aside the trial for reasons based on the merits of the case, but not on any merely technical grounds.

When a Summary Court Martial is held in a force not attached to any Presidency, the Officer commanding such force may exercise the powers given in this Article in regard to setting aside trials.

The proceedings of every other Court Martial shall, when closed, be signed by the members, and shall without delay be forwarded or delivered to the Officer under whose orders the trial has been held.

CHAPTER III.—*Sentences.*

Of General Courts Martial.

Article 130.—(*a*) Any General Court Martial may for any offence falling under Articles 7 to 23, both inclusive, and for such offences only, sentence any person subject to its jurisdiction to death; or to transportation for life, or for any period not less than seven years: or to imprisonment (with or without hard labour, and with or without solitary confinement) for any period not exceeding fourteen years.

(*b*)—Any General Court Martial may for any offence falling under Article 54, 55, or 56 of these Articles, sentence any person as aforesaid to the penalties attached to such offences in Article 57, and may for any other disgraceful conduct award the penalties attached to that offence in Articles 136, 137, and 138.

(*c*)—Any General Court Martial may in any case where no special punishments are prescribed, or in addition to any special punishment, where so authorized, sentence any person amenable thereto to any punishment specified in Articles 131, 132, 133, 135, 137, and 138.

(*d*)—No Court Martial other than a General Court Martial shall have power to award a sentence of death, transportation, or imprisonment exceeding one year.

Any General Court Martial may sentence any Commissioned Officer to be dismissed the service or to be suspended from rank, pay and allowances for any stated period; or to be placed one or more steps lower in the list of his rank.

No Court Martial other than a General Court Martial shall have power to try or punish a Commissioned Officer.

Of General, District, or Garrison Courts Martial.

Article 131.—Any General, District, or Garrison Court Martial may sentence a Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer to be dismissed the service; or to be suspended from rank, pay, and allowances for any stated period; or to be reduced to a lower grade or class in his Department or to be placed one or more steps lower in the list of his rank.

No Court Martial inferior to a District or Garrison Court Martial shall have power to try or punish any Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer.

Reduction, dismissal, corporal punishment, and imprisonment.

Article 132.—Any Court Martial may sentence a Non-Commissioned Officer to be reduced to the ranks; or to be placed one or more steps lower in the list of his rank;

Or may sentence any person subject to these Articles below the rank of Warrant Officer, to be dismissed the service; or to suffer corporal punishment not exceeding fifty lashes; or to imprisonment with or without hard labour, and with or without solitary confinement for such periods as are hereinafter prescribed.

Limit of Imprisonment.

Article 133.—Except in the cases provided for in Articles 24 and 57, the limit of imprisonment, whether with or without hard labour and solitary confinement awardable by Courts Martial under these Articles, shall be for General Courts Martial two years; for District or Garrison Courts Martial one year; and for Regimental or Detachment Courts Martial six months.

Solitary Confinement.

Article 134.—No person shall, under any such sentence, or under one or more sentences, be kept in solitary confinement more than eighty-four days in one year, or more than fourteen days at one time, and there shall be between the periods of solitary confinement intervals of ordinary imprisonment at least equal to the period of solitary confinement.

Reduction to ranks.

Article 135.—No Non-Commissioned Officer shall be sentenced by any Court Martial to imprisonment or to corporal punishment without being first sentenced to reduction to the ranks.

Forfeiture of pay and pension.

Article 136.—On a conviction of any disgraceful conduct, a General, District, or Garrison Court Martial may, in addition to any other punishment which it is empowered to award, sentence the offender to forfeit all advantage as to additional pay, good conduct pay, and claim to pension on discharge, which might otherwise have accrued from the length or nature of his former service; or to forfeit all such advantage absolutely, whether it has accrued from former service or may accrue from future service.

Forfeiture of arrears of pay.

Article 137.—On any conviction of disgraceful conduct, if the offender be sentenced to dismissal from the service, or if his sentence involve dismissal under Article 155 or Article 157, he shall further be sentenced to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal or such portion thereof as may be required to make good any proved loss or damage arising out of his disgraceful conduct.

Any Court Martial may, in addition to dismissal, or to any punishment involving dismissal under Article 157 sentence any person whom it is authorized to try, to forfeit any arrears of pay and allowances, or other public money, due to him at the time of his dismissal, or such portion thereof as may be required to make good any proved loss or damage arising out of his misconduct.

Stoppages.

Article 138.—Every offender convicted of disgraceful conduct whose dismissal from the service is not so awarded or involved as aforesaid, shall, in addition to any other punishment, be sentenced by the Court to be put under stoppages, to the extent provided by Article 139, until the amount of any proved loss or damage arising out of such conduct, be made good.

And any Court Martial, in addition to any punishment other than, or not involving, dismissal, may sentence any person as aforesaid to be put under stoppages, to the extent specified in Article 139, until any proved loss or damage arising out of his misconduct be made good.

Extent of Stoppages.

Article 139.—Stoppages under Article 138 shall not be awarded, whether under one or more than one sentence to a greater extent than, in the case of an Officer, two-thirds, or in the case of any other person, one-half of his monthly pay and allowances; and shall not be so awarded as to extend beyond one year.

Any public money issued to the offender within the said period of one year, shall, for the purposes of this Article, be deemed to be pay and allowances.

Sentence of Transportation or Imprisonment on person already sentenced.

Article 140.—Whenever a sentence of transportation or imprisonment is passed by any Court Martial upon an offender already under sentence of transportation for a limited term, or of imprisonment, the Court may award transportation or imprisonment to commence on the expiration of such previous sentence; notwithstanding that the aggregate of any terms of imprisonment may thus exceed the limit of imprisonment which such Court is by these Articles of War empowered to award.

Form of sentence of death.

Article 141.—In awarding a sentence of death, a General Court Martial shall, at its discretion, direct that the offender shall "suffer death by being hanged by the neck until he be dead," or shall "suffer death by being shot to death."

CHAPTER IV.—*Confirmation and Commutation of sentences.*

Sentences to be confirmed or otherwise disposed of.

Article 142.—Save in the case of a Summary Court Martial, no decision or sentence of any Court Martial shall be carried into effect until confirmed or otherwise disposed of by—

(*a*)—In the case of any Court Martial for the trial of any person within his command—the Commander-in-Chief of a Presidency: or

(*b*)—In the case of any Court Martial for the trial of any person under his command any Officer authorized in this behalf by warrant of the Commander-in-Chief of any Presidency, but subject to any restrictions contained in the warrant: or

(*c*)—In the case of any Court Martial for the trial of any person under his command—any Officer in actual command of troops who is authorized in this behalf by the Governor General of India in Council, the Governor of Fort St. George in Council, or the Governor of Bombay in Council:

(*d*)—In the case of any Court Martial for the trial of any person under his command—any Officer commanding Native troops not attached to the forces of a Presidency, who is authorized in this behalf by warrant of the Commander-in-Chief in India:

(*e*)—In the case of a Detachment General Court Martial held beyond the limits of British India, and not within the dominions of the Princes and States of India in alliance with Her Majesty—the

Officer appointing such Court Martial, unless the sentence of such Court Martial exceeds that awardable by a District or Garrison Court Martial, in which case the Commander of Her Majesty's forces with which the offender is serving shall alone have power to confirm, remit, commute, or annul such sentence:

(*f*)—In the case of a Regimental Court Martial for the trial of any person under his Command—the Officer appointing such Court Martial:

(*g*)—In the case of a Regimental or other Detachment Court Martial for the trial of any person under his command, where the detachment consists of, or is equal in strength to, three troops or companies,—the Commanding Officer:

(*h*)—But when any such Court Martial is held in a Detachment of less than, or not equal in strength, to three troops or companies, the sentence shall be submitted for confirmation to the Officer commanding the prisoner's Regiment, or to the nearest superior Officer holding a command of not less than a Regiment, who is hereby empowered to dispose of such sentence in like manner as if the trial had been held by his own order:

Provided that in detached situations beyond sea, or out of British India, or on service in the field, or in cases where immediate example is necessary and reference cannot be made to such Regimental or other superior Commanding Officer without detriment to the service, the Officer commanding any Detachment, whatever its strength, may dispose of and carry out the sentence of any Detachment Court Martial held by his order.

(*i*)—Any Commander-in-Chief or Officer mentioned in clauses (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), and (*g*) of this Article may, subject to the provisions of these Articles, and to the restrictions (if any) in the warrant (if any) by which he is authorized in this behalf, mitigate, remit, commute, or annul any sentence to the execution of which his confirmation is necessary.

Sentence of death.

Article 143.—When a sentence of death has been passed by any General Court Martial, the Officer so authorized in accordance with these Articles may confirm such sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to transportation for life or for any term not less than seven years, or to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years.

Sentence of penal servitude or transportation.

Article 144.—Notwithstanding any thing hereinbefore contained, whenever any person being an European or American or a legitimate lineal descendant of an European or American, is convicted of an offence punishable under these Articles with transportation, the Court shall sentence the offender to penal servitude instead of transportation, according to the provisions of Act No. XXIV. of 1855.

When a sentence of transportation has been awarded by any General Court Martial, the Officer authorized in accordance with these Articles may confirm the sentence and cause it to be carried into effect, or may, in lieu thereof, sentence the offender to imprisonment (with or without hard labour, and with or without solitary confinement) for any term not exceeding fourteen years, and not exceeding the term of transportation awarded by the Court.

Sentence of dismissal on Commissioned Officers, &c.

Article 145.—A sentence of dismissal from the service passed by any Court Martial under these Articles of War upon a Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer, may be commuted by the Officer duly authorized to confirm or otherwise dispose of such sentence, to suspension from rank, pay, and allowances for any stated period.

Any sentence on Commissioned Officers, &c.

Article 146.—Except on foreign service, or when reference cannot, without detriment to discipline, be made to superior military authority, no decision or sentence passed upon any Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer, shall be carried into effect until confirmed or otherwise disposed of by the Commander-in-Chief of the Presidency to which the offender belongs, or, when the offender is serving in a Presidency, by the Commander-in-Chief of such Presidency, or, when the offender belongs to a force not attached to any Presidency, by the Officer commanding the force.

Sentence of corporal punishment.

Article 147.—A sentence of corporal punishment passed by any Court Martial may be commuted, by the Officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for any period not exceeding one year, which might have been awarded by such Court Martial.

Sentence of imprisonment with hard labour.

Article 148.—A sentence of imprisonment with hard labour passed by any Court Martial may be commuted, by the Officer authorized to confirm or otherwise dispose of such sentence, to dismissal from the service, or to imprisonment without hard labour, and with or without solitary confinement, for the term mentioned in the sentence, or for any shorter term.

Sentence of reduction with corporal punishment or imprisonment.

Article 149.—The Officer duly authorized to confirm or otherwise dispose of the sentence of any Court Martial may, in the case of a Non-Commissioned Officer sentenced by any such Court, mitigate a sentence of reduction to the ranks followed by corporal punishment or imprisonment to reduction only.

Commutation of sentence of dismissal on Non-Commissioned Officers.

or may commute a sentence of dismissal from the service to reduction to the ranks.

CHAPTER V.—*Execution of Sentences.*

Transportation.

Article 150.—Whenever the sentence of a General Court Martial awarding transportation is duly confirmed, or whenever a sentence of death is duly commuted to transportation, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the

sentence, or commuted sentence, to the Officer in charge of the nearest jail; and such Officer shall give effect to the sentence accordingly under such order as he may receive from the Local Government.

Imprisonment with hard labour.

Article 151.—Whenever the duly confirmed sentence of any Court Martial awards imprisonment with hard labour, or whenever the sentence of any Court Martial is duly commuted to such imprisonment, the offender shall be delivered over with a warrant of commitment, containing an authenticated copy of the said sentence or commuted sentence, to the Officer in charge of the nearest jail; and such Officer shall detain the offender, under the rules in force, in such jail according to the exigency of the warrant, or until he is discharged by due course of law.

Place of imprisonment.

Article 152.—The Commander-in-Chief of a Presidency may, as occasion requires, direct that any person under his command and sentenced under these Articles to imprisonment, shall be confined in any jail or other fit place for confinement, situate within the local limits of such command, or may order his removal from any place of confinement under military control to any other such place, or to any jail or other fit place of confinement situate within such local limits.

The Officer commanding any force not attached to any Presidency shall have the like powers so far as regards persons under his command and jails or other places of confinement situate within the local limits of such command.

Transfer to Military custody.

Article 153.—When any person subject to these Articles is confined in any jail or other place not subject to military control, under a sentence of transportation or imprisonment, whether passed by a Court Martial or by Court of Criminal Justice, the Government of India, or the Local Government of the Presidency or place wherein such person is confined, may order his transfer to military custody,

or may order his removal from one to any other such place of confinement within the territories of such Government.

The period during which such person is in custody during his removal shall be reckoned as part of his term of transportation or imprisonment.

Forfeiture of pay during imprisonment.

Article 154.—Any person subject to these Articles of War in receipt of public pay, who is imprisoned in any place, under the sentence, or commuted sentence, of a Court Martial, or a Court of Criminal Justice, shall, during such imprisonment, if his sentence does not involve dismissal under Article 155 or Article 157, forfeit all pay and allowances, and be entitled to subsistence only, according to the rates prescribed in the regulations of the Government to which he is subject.

And any such person in confinement in any place whatsoever, whether as a punishment by his Commanding Officer, or under any charge of which he is subsequently convicted, shall, during such confinement, forfeit all pay and allowances, and be entitled to subsistence, only according to the regulations of the Government to which he is subject.

Striking Convict off strength of Regiment.

Article 155.—Every person sentenced by any Court Martial, or by any Court exercising jurisdiction in criminal cases, to transportation or to imprisonment with hard labour, for any term exceeding three months, shall, in the case of a sentence by a Court Martial, from the date of confirmation of such sentence, and in the case of a sentence by a Criminal Court from the date of such sentence, be struck off the strength of the regiment, corps, or department to which he belongs.

Non-re-admission of Convict.

Article 156.—No person who has undergone any such period of transportation or imprisonment with hard labour, shall be re-admitted to the service, or be entitled to any pension:

Provided that in the case of any illegal sentence duly annulled as aforesaid, or of a pardon under Article 160, such person may, by order of the Government when the offence is non-military, or by order of the Commander-in-Chief of the Presidency when the offence is military, be re-admitted to service or pension, as the case may be.

Dismissal with ignominy.

Article 157.—Any person below the rank of Warrant Officer sentenced under these Articles to dismissal, or to imprisonment with hard labour or to corporal punishment, for disgraceful conduct, shall, on the confirmation of such sentence, be dismissed with ignominy from the service.

Publication of sentence for disgraceful conduct.

Article 158.—A copy of every confirmed sentence of dismissal, imprisonment with hard labour, or corporal punishment, for disgraceful conduct, and of the orders passed thereupon, shall be sent by the Adjutant General of the Army to the Chief Civil or Political Officer of the District wherein the offender's place of residence is situated; and such Officer shall publish the sentence and orders at the said place in such manner as may there be usual.

Sentences of Summary Courts Martial.

Article 159.—Any sentence awarded by a Summary Court Martial may be carried into effect forthwith on the Commanding Officer's own authority, and all provisions contained in Articles 151, 152, 153, 154, 155, 156, 157, 158, 160, and 161 as to execution of sentences and disposal of prisoners, shall equally apply to persons sentenced by Summary Court Martial.

Chapter VI.—*Pardons and Remissions.*

Pardon of person convicted of military offence.

Article 160.—The Governor General of India in Council, as regards any person subject to these Articles who has been convicted by a Court Martial of a military offence, and the Governors of Fort St. George in Council, and of Bombay in Council, and the Commander-in-Chief of any Presidency, as regards any such person within the territories subject to such Government or under the command of such Commander-in-Chief, shall have power to pardon such person, and may, instead of granting a full pardon to any such person, remit wholly or in part any punishment awarded to him by a Court Martial,

and may order the restoration to such person of any service or other advantage forfeited under his sentence.

Release of prisoners.

Article 161.—Any Officer in charge of a jail on receiving a notification under the hand of a Secretary to the Government of India or to the Government of Fort St. George or to the Government of Bombay, or under the hand of the Commander-in-Chief of any Presidency, or of the Officer commanding any force not attached to a Presidency, or any Division or District, that the sentence under which any person subject to these Articles is imprisoned in such jail, has been annulled or remitted, or that any such person has been pardoned under Article 160, shall on the authority of such notification alone, immediately release the prisoner or return him to military custody.

CHAPTER VII.—*Regimental Courts of Enquiry.*

Article 162.—If any person subject to these Articles is, without due authority, absent from his duty for two months, a Regimental Court of Enquiry, composed of European or Native Commissioned Officers, or of both in conjunction, shall forthwith assemble, and having received proof on oath or affirmation of the unauthorized absence, shall declare the same, and the period thereof; and the Officer commanding the Regiment or Corps shall record such declaration in the regimental books.

If the person absent does not afterwards surrender or is not apprehended, such record shall have the legal effect of a conviction of desertion.

If he surrenders or is apprehended, such record, or a copy thereof purporting to bear the signature of the Officer having the custody of the regimental books, shall, on the trial of such person for desertion, be presumptive evidence of the facts therein recorded; and on proof of the identity of the prisoner with the person therein-mentioned, he may be found guilty of desertion.

Persons absent as Prisoners of War.

Article 163.—No person subject to these Articles shall be entitled to any pay or allowances or other public money, or to reckon service during any absence as a prisoner of war.

But when such person rejoins the service, enquiry shall be made by a Court Martial into the circumstances of his absence; and unless it is proved to the satisfaction of such Court that he was taken prisoner through his own wilful neglect of duty, or that he had served with or under or aided the enemy, or that he had not as soon as possible returned to the service, he may be recommended by the Court to receive either the whole or any portion of the arrears due to him, and to reckon his service.

Such recommendation duly confirmed by the Commander-in-Chief of the Presidency, or by the Officer Commanding any Force not attached to a Presidency to which the said person belongs shall entitle him to receive such arrears and reckon service accordingly.

TITLE VI.—POWERS OF OFFICERS INDEPENDENTLY OF TRIAL.

Reduction to ranks.

Article 164.—The Commander-in-Chief of a Presidency, and the Officer commanding any force not attached to a Presidency, shall have respectively power to reduce to the ranks Non-Commissioned Officers under their respective commands.

Minor Punishments.

Article 165.—The Commander-in-Chief in India shall, under the authority of the Governor General in Council, prescribe the minor punishments to which persons subject to these Articles shall for light offences be liable, without the intervention of a Court Martial, and shall specify the Officer or Officers by whom, and the extent to which, such minor punishments may be awarded.

No such minor punishment shall be awarded by a Court Martial; and, unless otherwise specially provided by the said Commander-in-Chief, no Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, or Warrant Officer, shall be liable to any such minor punishment.

Good conduct pay shall not necessarily be forfeited on the infliction of a minor punishment, but forfeiture thereof may be awarded as a substantive punishment either by order of the Commanding Officer or by sentence of a Court Martial, as may from time to time be prescribed in the general orders of the Commander-in-Chief in India or of the Commander-in-Chief of the Presidency, as the case may be.

Whenever a soldier is convicted by a Court Martial, his good conduct pay shall cease.

Forfeiture of good conduct pay may be awarded in addition to any other minor punishment.

Offences of Native followers.

Article 166.—For any offence in breach of good order, the Commanding Officer of any Regiment, Corps, or Detachment, whether European or Native, in camp, or at any frontier post at which troops are stationed, and to which this Article may be specially extended by the Governor General of India in Council, the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government, may sentence any Native follower of such regiment, corps, or detachment, if above the degree of a menial servant, to pay a fine not exceeding fifty Rupees, or, in default of payment, or in lieu thereof, to imprisonment for any period not exceeding thirty days; or if the Native follower be not above the degree of a menial servant, to imprisonment not exceeding seven days, or to corporal punishment not exceeding twelve strokes of a rattan.

Imprisonment awarded under this Article may be carried out in a military guard, or in a jail, as ordered by the said Commanding Officer; and the Officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said Commanding Officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

Complaints against Officers.

Article 167.—Any person subject to these Articles, who deems himself wronged by any superior or other Officer, may, if not attached to a troop or company, complain to the Officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the Officer commanding the same.

When the Officer complained against is the Officer to whom any other complaint should under this Article be preferred, the aggrieved person shall complain to such Officer's next superior Officer.

No such complaint shall be made to any Officer other than those indicated in the former part of this Article.

Every Officer receiving any such complaint shall examine into it, and, when necessary, refer it to superior authority.

Every such complaint shall be preferred through such channels as may be from time to time prescribed by proper authority; and any person preferring a frivolous or groundless complaint shall be liable to trial by any Court Martial competent to try him, and to such punishment, other than dismissal, corporal punishment, or imprisonment with hard labour, as the Court is empowered by these Articles to award.

Provost Marshals.

Article 168.—For the prompt and instant repression of irregularities and offences committed in the field or on the line of march, Provost Marshals shall be appointed by the Commander-in-Chief of the Presidency, or the Officer commanding the forces in the field; and the powers and duties of such Provost Marshals shall be regulated according to the established custom of war and the rules of the service.

Their duties and powers.

Article 169.—The duties of a Provost Marshal so appointed are to take charge of prisoners confined for offences of a general description, to preserve good order and discipline, and to prevent breaches of the same by persons belonging or attached to the Army.

The Provost Marshal may punish, corporally, then and there, any person amenable to these Articles below the rank of Warrant Officer, who in his view, or in the view of any of his assistants, commits any breach of good order and military descipline:

Provided that such punishment shall be limited to the necessity of the case, and shall accord with the orders which the Provost Marshal may from time to time receive from the Officer commanding the troops:

Provided also that the orders of the said Commanding Officer shall in no case authorize such corporal punishment in excess of that awardable by sentence of a Court Martial.

If the actual commission of the offence is not witnessed by the Provost Marshal, or any of his assistants, but sufficient proof can be obtained of the offender's guilt, he shall report the case to the Commander of the Troops, who shall deal with the case as he may deem most conducive to the maintenance of good order and military discipline.

TITLE V.—NON-MILITARY OFFENCES.

Offences committed within jurisdiction of Criminal Court.

Article 170.—Any person subject to these Articles who, at any place in British India within the jurisdiction of any Court of Criminal Justice established by Her Majesty, or by the Government of India, or by the Local Government, is accused of any offence against the Indian Penal Code, and not included in the foregoing Articles, shall be delivered over to the nearest Magistrate to be proceeded against according to law.

All persons in, or attached to, the Army, are hereby required, upon application duly made to them for that purpose, to assist the Officers of Justice in apprehending and securing any such accused person.

Any person in, or attached to, the Army, wilfully neglecting or refusing so to assist shall be punished with any punishment, other than death or transportation, awardable under these Articles.

Offences committed out of British India.

Article 171.—In any place out of British India, offences against the Indian Penal Code, and not included in the foregoing Articles of War, shall, when committed by any person amenable to these Articles, be cognizable by a General Court Martial to be convened by any Officer who is empowered by warrant, or order in Council, or by Article 77, to appoint General Courts Martial.

General Court Martial for trial of such offences.

Article 172.—The provisions of these Articles as to the composition and procedure of General Courts Martial shall, with the exception of those contained in Article 117, apply to General Courts Martial for the trial of non-military offences:

Provided that such General Courts Martial shall in every case be attended by a Judge Advocate.

Sentences of such Court.

Article 173.—A General Court Martial held for the trial of a non-military offence, shall, on the conviction of any offender, award punishment in accordance with the provisions of the Indian Penal Code.

Confirmation of Sentences.

Article 174.—No decision or sentence passed by any such General Court Martial shall be carried into effect until confirmed or otherwise disposed of by the authority which, under these Articles, is empowered to confirm or otherwise dispose of the sentence of such General Court Martial; and no sentence of death shall be carried into effect until confirmed by the Commander-in-Chief of the Presidency to which the offender belongs, or when the offender beyond the limits of British India, until confirmed by the Officer commanding Her Majesty's Forces with which the offender is serving, or when the offender does not belong to any Presidency, until confirmed by the Commander-in-Chief in India.

Commutation of Sentences.

Prisoners.

Article 175.—All the provisions contained in Articles 143, 144, 148, 150, 151, 152, 153, 154, 155, 156, and 161, relating to the disposal of sentences and of sentenced prisoners, shall apply to persons sentenced by a General Court Martial for a non-military offence.

TITLE VI.—EFFECTS OF DECEASED MEN AND OF DESERTERS.

Article 176.—When any person subject to these Articles dies, or is killed in the field, the Officer commanding the Regiment, Corps, or Detachment, or the Officer in charge of the Department to which such person belonged, shall, if no representative in interest of such person be on the spot,

secure his effects in camp or quarters, and cause an inventory thereof to be made, and a duplicate of such inventory to be lodged with the Officer commanding, or in charge of, the Regiment, Corps, Detachment, or Department to which the deceased belonged.

Sale of effects and discharge of debts.

Article 177.—If there be no representative on the spot, or readily accessible, such Officer shall, without any representation taken out, publicly sell such part of the effects of the deceased in camp or quarters as do not consist of money, and shall pay thereout the debts of the deceased in camp or quarters, the expense of his funeral ceremonies, and his regimental debts of every description; and shall pay the surplus (if any) to the representative in interest of the deceased.

Remittal of Surplus.

Article 178.—In the event of no claim for the surplus of the deceased person's estate being made and established within twelve months of his death, the amount in the hands of the Officer in charge of the estate shall be remitted to the Controller General of Accounts at Calcutta, or to the Accountant General to the Government of Fort St. George or of Bombay; or, if the deceased shall have belonged to a force not under any Presidency, to the Controller General of Accounts at Calcutta.

Sale of effects of Deserters.

Article 179.—The effects in camp or quarters of a deserter shall be publicly sold, and the proceeds, after payment thereout of all regimental or departmental claims, shall be remitted by the Officer commanding, or in charge of, the Regiment, Corps, Detachment, or Department to which the deserter belongs, to the Controller General of Accounts at Calcutta or to the Accountant General to the Government of Fort St. George or of Bombay.

Remittal of proceeds.

If the deserter belongs to a force not attached to any Presidency, then the said proceeds shall be remitted to the Controller General of Accounts at Calcutta.

PART III.—MISCELLANEOUS.

Prohibition of Second Trial.

(*a*)—Persons subject to the Articles contained in Part II. of this Act, who have been acquitted or convicted either by a Court Martial or by a Court of Criminal Justice, of any offence, whether military or non-military, shall not be again tried or punished for the same offence by any Court whatsoever.

But any such person may be dismissed the service.

Prohibition of Arrest for Debt.

(*b*)—No person attested under this Act or any previous Articles of War for Her Majesty's Indian Army, shall so long as he belong to such Army be liable to be arrested for debt under any process issued by or by the authority of any Court of Law.

The Judge of any such Court may examine into any complaint made by such person or his superior Officer, of the arrest of such person contrary to the intent of this Act, and may by warrant under his hand discharge such person and shall award reasonable costs to the complainant, who may recover such costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining such process.

The arms, horse, clothes, equipments, regimental accoutrements, and necessaries of any such attested person shall not be seized, nor shall his pay and allowances or any any part thereof be attached, in satisfaction of any judgment against him or any person whom he may represent.

Breach of Cantonment Rules.

(*c*)—When any offence in breach of any duly authorized Cantonment rule or regulation is committed by any person not subject to the said Articles, and not an European British subject or an Officer or Soldier, the Officer commanding the Cantonment may, where there is no Cantonment Magistrate, summon or order the apprehension of the offender; and such Officer may (after personally investigating the case) sentence the offender to pay a fine not exceeding fifty rupees; or in default of payment of, or in lieu of such fine, to imprisonment in any jail or military guard for a period not exceeding thirty days.

The Officer in charge of any jail shall, on the delivery to him of the person of the offender, with a warrant under the hand of the said Commanding Officer, detain the offender according to the exigency of the warrant, or until he is discharged by due course of law.

Capture of Deserters.

(*d*)—Whenever any person subject to the said Articles deserts, the Commanding Officer of the regiment, corps, or detachment to which he belongs, shall give written information of the desertion to such Civil, Political, or Police authorities as, in his opinion, may be able to afford assistance towards the capture of the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter, in like manner as if he were a person for whose capture a warrant had been issued by a Magistrate, and shall deliver the deserter when apprehended to Military custody.

Such authorities shall also, by such means as appear to them best adapted for the purpose, prevent persons reasonably suspected to be subject to the said Articles from travelling through the districts subject to their jurisdiction, unless on duty, or furnished with a certificate of leave or discharge.

Any Police Officer may arrest without warrant any person so suspected, and shall bring him without delay before the nearest Magistrate, or the nearest Military Commanding Officer when no Magistrate is readily accessible, to be dealt with according to law.

Apprehension of Military Offenders.

(*e*)—Whenever any person subject to the said Articles, who is accused of any military offence, is within the jurisdiction of any Civil, Political, or Police Officer, such officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect, signed by his Commanding Officer.

Presumption as to signatures.

(*f*)—In any proceeding under this Act, any application, certificate, warrant, reply, or other document purporting to be signed by an officer in the civil or military service of Government shall, on production, be presumed to have been duly signed by the person and in the character by whom and in which it purports to have been signed, until the contrary is shown.

Native Troops serving out of their own Presidency.

(*g*)—When any portion of the Native troops belonging to any Presidency is serving within the limits of any other Presidency, such troops shall, during such service, for all the purposes of the said Articles, be under the authority and orders of the Commander-in-Chief of the Presidency in which they are serving:

Provided that it shall be lawful for the Governor General of India in Council to direct that, for the purposes of the said Articles, Native troops serving out of their own Presidency shall continue subject to the authority and orders of the Commander-in-Chief of the Presidency to which such troops belong.

Power to make Orders and issue Warrants.

(*h*)—The Governor General of India in Council,

The Governors of Fort St. George and Bombay in Council,

The Commander-in-Chief of any Presidency,

may respectively make all orders and issue all warrants for holding Courts Martial or otherwise, which appear necessary for the purposes of this Act; and in the case of military offences requiring to be disposed of without delay, the Governor General of India in Council and the Governors of Fort St. George and Bombay in Council may respectively further authorize any officer empowered by order in Council to confirm, commute, remit or annul sentences in such cases to refer such sentences for orders to the Commander-in-Chief of the Presidency.

Limitation of Powers.

(*i*)—Nothing hereinbefore contained shall empower the Commander-in-Chief of a Presidency to re-admit to service or pension any person not within his command, or to authorize any officer to appoint, or to confirm, commute, remit, or annul the sentences of Courts Martial for the trial of any person not within the command of such Commander-in-Chief except in the case specified in the proviso in Clause (*g*) of this Part,

or shall empower any Government to give directions as to the composition of, or to authorize the appointment of Courts Martial in any place for the time being subject to any other Government.

Nothing in this Act shall be deemeed to affect authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal warrant or commission.

Power to make rules.

(*j*)—It shall be lawful for the Governor General of India in Council from time to time to make rules consistent with this Act, for the guidance of officers, whether Military, Civil, or Political, in all matters connected with its enforcement.

All such rules shall be published in the *Gazette of India*, and shall thereupon be deemed to have the force of law.

The Commander-in-Chief in India, as regards the Presidency of Fort William and Forces not attached to any Presidency, may, with the previous sanction of the Governor General of India in Council, and the Commanders-in-Chief of the Presidencies of Fort Saint George and Bombay, as regards their respective Presidencies, may, with the previous sanction of the Local Government, from time to time substitute for the forms of affirmation given in Articles 109 and 111 as appropriate to Native officers and witnesses, such other forms as may be thought appropriate to Native officers and witnesses of any religion.

Articles to be read periodically.

(*k*)—The following Articles, namely, Articles 3, 4, 5, 7 to 71, both inclusive, 90, 91, 92, 93, 94, 125, 126, 130, 131, 132, 133, 135, 136, 137, 138, 139, 154, 167, and 176, shall be read once in every three months at the head of every regiment, corps, troop, or company in the service.

APPENDIX.

PART I.—Definitions in the Indian Penal Code.

[See Part I. Clause (*e*).]

Wrongful Gain.

23 "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

Wrongful loss.

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

Dishonestly.

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

Fraudulently.

25. A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

Reason to believe.

26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

Of Hurt.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

Grievous Hurt.

320. The following kinds of hurt only are designated as "grievous":—

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

Voluntarily causing hurt.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing grievous hurt.

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

OF CRIMINAL FORCE AND ASSAULT.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Criminal Force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(*b*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion, A has therefore used force to Z; and if A has done this without Z's consent intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has committed criminal force to Z.

(*c*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d*) A intentionally pushes against Z in the street. Here A has by his own bodily power moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(*e*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injury, frighten, or annoy Z, he has used criminal force to Z.

(*f*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(*g*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling: A has therefore intentionally used force to Z: and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(*h*) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c*) A takes up a stick, saying to Z, "I will give you a beating." Here though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

Theft.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move every thing which in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate without Z's consent, A has committed theft.

(*e*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g*) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(*j*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k*) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z, as a reward for its restoration. Here A takes dishonestly: A has therefore committed theft.

(*m*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(*o*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p*) A in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

Of Extortion.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or any thing signed or sealed which may be converted into a valuable security, commits "extortion."

Illustrations.

(*a*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(*c*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d*) A by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here as the paper so signed may be converted into a valuable security, A has committed extortion.

II.—Indian Penal Code, Chapter V.—of Abetment. Sections 107 and 108.

(See *Article* 71).

Abetment of a thing.

107. A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or,

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does any thing in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b*) A instigates B to murder D. B in pursuance of the instigation stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a*) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b*) A with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(*c*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d*) A intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

INDEX.

(*Nothing hereinafter contained shall be deemed to have the force of law*).

Abandoning garrison, &c., Article 14.
Abetment of offences punishable under Act, Article 71.
Absence without leave, Article 30.
„ „ procedure in trial for, Article 115.
„ from camp without leave, Article 51.
„ from camp after retreat-beating, Article 52.
„ from cantonment or lines after tattoo, *ib.*
„ of President of Court Martial, Article 103.
„ excuse for, Article 115.
„ of officer on revision, Article 120.
„ from duty for two months, Article 162.
„ as prisoner of war, Article 163.
Accountant General, remittal to, Articles 178, 179.
Accoutrements, making away with or losing, Article 47.
Additional pay, forfeiture of, Articles 76, 82, 136.
Adjournment of Court Martial, Article 106.
„ of trial for desertion, absence without leave, overstaying leave, or not rejoining, Article 115.
Adjutant General of Army to send copies of certain sentences and orders passed thereon, Article 158.
Affirmation of person reported fit for duty, Article 1.

Affirmation of Interpreter, Article 108, at Summary Court, Article 127.
,, of President and Members, Article 109.
,, of Judge Advocate, Article 110.

See *Evidence*.

Aggravating disease or infirmity, Article 58.
Aiding intentionally, see *Abetment*.
Alarm, using words intended to create in time of war, Article 23.—See *False Alarm*.
Allied State, station not in British India nor in, Articles 77, 142, clause (*e*).
Allowance, obtaining by false statement, &c., Article 62.
American not triable by Court composed of Native Officers, Part I, clause (*d*) proviso.
,, when to be sentenced to penal servitude, Article 144.
Ammunition, making away with or losing, Article 47.
,, embezzlement or fraudulent misappropriation of Government, Article 54.
,, furnishing false return of, Article 63.
Annulment of sentences of Courts Martial, Article 142, clause (*i*).
,, of sentence of Detachment General Court Martial, held neither in British India nor in allied Indian State, Article 142, clause (*e*).
,, of illegal sentence, re-admission after, Article 156.
Appearing armed when off duty, Article 49.
Application of Articles, Part I, clause (*d*).
,, for aid in apprehending person accused of military offence, Part III, clause (*e*).
Apprehension of deserter, omission to cause, Article 28.
,, of person breaking cantonment rules, Part III, clause (*c*).
,, of person accused of military offence, Part III, clause (*e*).
Arms, making away with, or losing, Article 47.
,, embezzlement or fraudulent misappropriation of Government, Article 54.
,, furnishing false return of, Article 63.
'Army' defined, Part I, clause (*e*).
,, Head Quarters, monthly returns of trials furnished to, Article 95.
Arrears of pay and allowances, forfeiture of, Articles 76, 82, 85, 137.
Arrest, leaving, Article 36.
,, of person accused of military offence, Article 100.
,, detainment in, *ib*.
,, witnesses privileged from civil, Article 124.
,, of attested persons for debt, prohibited, Part III, clause (*b*).
,, of persons suspected to be deserters, Part III, clause (*d*).

See *Apprehension*.

Arsenal, Summary Court Martial held by European Officer in charge of, Article 90.
Articles, application of, Part I, clause (*d*).
,, to be read to recruits, Article 1.
,, to be read to troops every quarter, Part III, clause (*k*).
Artificers, Articles apply to, Part I, clause (*d*).
'Assault' defined, Part I, clause (*e*), and Appendix No. 1.
,, on superior officer, Article 8.
,, on persons bringing provisions, Article 22.
,, on sentry, Article 27.
Assembly of Court Martial, Article 106.
Assistance to enemy, Article 17.
,, in apprehending and securing persons accused of non-military offences, Article 170.
Assistant Provost Marshal, impending or refusing to assist, Article 39.
Attempt to use criminal force to superior officer, Article 8.
,, to force sentry, Article 27.
,, to commit suicide, Article 48.
Attestation, Article 2.
'Attested' defined, Part I, clause (*e*).
Attested person, dismissal of, Article 5, certificate to, Article 6.
Bahádurs, precedence of, Article 105.
Bázárs.—See *Superintendents*.
Beating, causing reparation for, Article 43.
Belief—See *Reason to believe*.
Betraying watchword, Article 15.
Bludgeon—See *Weapon*.
Books—See *Court Martial Books*.
Bribe, requiring or accepting, Article 45.
British-born subjects, Articles not to apply to, Part I, clause (*d*), proviso.
British India, sentences of Courts Martial held beyond limits of, Article 142, clauses (*e*) and (*g*).
Buglers, Articles apply to, Part I, clause (*d*).
,, attestation of, Article 2.
Camp, appearing without authority, armed in, Article 49.
,, being without authority two miles distant from, Article 51.
,, Equipage Depôt, Summary Court Martial held by European Officer in charge of, Article 90.
Cantonment Magistrates, saving of regulations defining office and powers of, Part I, clause (*f*.)
,, Rule, procedure on breach of, Part III, clause(*c*.)—See *Police*.
Carriage, exacting, Article 41.
Casting vote of President of Court Martial, Article 118.
Certificate to attested person dismissed or discharged, Article 6,
,, travelling without, Part III, clause (*d*).
,, of previous conviction, Article 117.
Challenge by prisoner, Article 107.
Character, enquiry into general, Article 117.
Charge or declaration made to recruit, Article 1.
Christian lineal descendants of British-born subjects, not triable or punishable under Articles, Part I, clause (*d*) proviso.
,, Europeans not being British subjects, and their Christian lineal descendants, triable only by Courts Martial composed of European Officers, *ib*.
Civil Officer of District to publish sentence for disgraceful conduct, Article 158.
,, authorities to take steps to capture deserter, Part III, clause (*d*.) or other military offender, *ib*, clause (*e*).
,, authorities, rules for guidance of, Part III, clause (*j*.)
Clothes, making away with, or losing, Article 47.
,, embezzlement or fraudulent misappropriation of Government, Article 54.
,, furnishing false return of, Article 63.
Commander-in-Chief in India may be empowered to authorize Officer commanding certain Native troops to appoint General Courts Martial, Article 73, clause (*d*).
,, ,, may be empowed to authorize Officer commanding certain Native troops to appoint District or Garrison Courts Martial, Article 79, clause (*d*).
,, ,, may set aside trial of Summary Court Martial, Articles 129.
,, ,, to prescribe minor punishments and specify Officer to award them, Article 165.
,, ,, his confirmation of sentences of death, Article 174.
,, ,, saving of his authority conferred by Act of Parliament or Royal warrant or commission, Part III, clause (*i*).
,, ,, may substitute new forms of affirmation, Part III. clause (*j*).
Commander-in-Chief of Presidency may order dismissal of a Commissioned Officer, Article 3, or of any other person subject to the Articles, Article 4.

Commander-in-Chief of Presidency may appoint General Court Martial, Article 73.
" " may appoint Detachment General Court Martial, Article 77.
" " may appoint District or Garrison Court Martial, Article 79.
" " transmission of proceedings of Regimental or Detachment Court Martial held on line of march or on road to, Article 129.
" " may set aside trial by Summary Court Martial, Article 129.
" " may confirm, mitigate, commute, remit, and annul sentences of Courts Martial, Article 142, clauses (*a*), (*b*), and (*i*).
" " may delegate such powers, *ib.*, clause (*b*).
" " to confirm sentence on Commissioned Officer, Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, and Warrant Officer, Article 146.
" " may direct offenders to be imprisoned in any Jail, Article 152.
" " may order prisoner's removal, from military jail, *ib.*
" " when he may order re-admission of convict, Article 156.
" " may pardon person convicted of military offence, Article 160.
" " may remit punishment awarded by a Court Martial, *ib.*
" " may order restoration of advantage forfeited, Article 160.
" " his confirmation of recommendation that prisoner of war may receive arrears, Article 163.
" " may reduce to ranks, Article 164.
" " to appoint Provost Marshal, Article 168.
" " to confirm sentences of death, Article 174.
" " may make orders, and issue warrants, Part III, clause (*h*).
" " reference of sentence to, *ib.*
" " may substitute new forms of affirmation, Part III, clause (*j*).
'Commanding Officer' defined, Part I, clause (*e*).
" " to make declaration to person reported fit for duty, Article 1.
" " may dismiss attested person improperly re-enlisting, Article 5.
" " to furnish certificate to attested person dismissed or discharged, Article 6.
" " to constitute Summary Court Martial, Article 91.
" " holding Summary Court to make oath or affirmation, Article 127.
" " and to record previous conviction and general character of offender, Article 128.
" " and to sign proceedings, Article 129.
" " of cantonment, his jurisdiction in case of breach of cantonment rules, Part III, clause (*c*).
" " to give information of desertion, Part III, clause (*d*).
Commencement of Act, Part I, clause (*b*).
Commissariat Officer, saving of regulations defining office and powers of, Part I, clause (*f*).
Commissioned Officers, Articles apply to, Part I., clause (*d*).
" " defined, Part I, clause (*e*).
" " dismissal of, Article 3.
" " forfeit claim to pension on dismissal, *ib.*
Commissioned Officer, General Court Martial to be composed of, Article 74.
" " Detachment General Court Martial to be composed of, Article 78.
" " District or Garrison Court Martial to be composed of, Article 80.
" " Regimental and Detachment Courts Martial to be composed of, Articles 84, 88.
" " not triable by Summary Court Martial, Article 92.
" " Summary Court Martial to be attended by two, Article 125.
" " who are not to be sworn, Article 127.
" " nor to sign proceedings, *ib.*
" " triable or punishable only by General Court Martial, Article 130.
" " may be dismissed, suspended, or placed lower by General Court Martial, Article 130.
" " commutation of sentence of dismissal on, Article 145.
" " confirmation of sentence on, Article 146.
" " not liable to minor punishment, Article 165.
Commutation of sentences of Courts Martial, Article 142, clauses (*c*) and (*i*).
" of sentences of Regimental Courts Martial, *ib.*, clause (*f*).
" of sentences of Regimental Detachment Courts Martial, *ib.*, clause (*g*).
" of sentences of Detachment General Court Martial, *ib.*, clause (*e*).
" of sentence of death, Article 143.
" of sentence of dismissal, Article 145.
" of sentence of corporal punishment, Articles 146, 147.
" of sentence of rigorous imprisonment, Article 148.
" of sentence of reduction with corporal punishment or imprisonment, Article 149.
" of sentence of dismissal of Non-Commissioned Officer, *ib.*
" of sentences for non-military offences, Article 175.
Complaint against Officer, Article 167.
" penalty for frivolous, *ib.*
" of soldier arrested for debt, Part III, clause (*b*).
Concealing mutiny or sedition, Article 7.
" correspondence with enemy, Article 16.
" desertion or harbouring of deserters, Article 28—see *Abetment, Omission.*
Confinement, leaving, Article 36.
" of person accused of military offence, Article 100.
" detainment in, *ib.*
Confirmation of decisions and sentences of Courts Martial, Article 142.
" of sentence of death, Articles 143, 174.
" of sentence of transportation, Article 144.
" of sentence on Commissioned Officer, &c., Article 146.
" of recommendation of Court Martial in case of prisoner of war, Article 163.
" of sentences of General Court Martial for non-military offences, Article 174.
Conniving, see *Abetment.*
Conspiracy against the State, concealing, Article 7.

See *Abetment.*

Contempt of Court Martial, Article 68.
" procedure in case of, Articles 69, 123.
Controller General of Accounts, remittal to, Articles 178, 179.

Convening Officer to fix date and hour of original assembly of Court Martial, Article 106.
„ when he may annul the proceedings, and order fresh trial, Article 115.
Convict to be struck off strength of regiment, Article 155.
„ not to be re-admitted to service, nor entitled to pension, excepted when pardoned or illegally sentenced, Article 156.
Conviction, evidence of previous, Articles 117, 128.
„ of desertion, record of unauthorised absence for two months to have effect of, Article 162.
Corporal punishment, sentence of, Articles 76, 82, 85, 89, 94.
„ of person below rank of Warrant Officer, Article 132.
„ commutation of sentence of, Article 147.
„ for disgraceful conduct, publication of sentence of, Article 158.
„ of Native follower committing breach of good order, Article 166.
„ may be inflicted by Provost Marshal, Article 169.
Corresponding with enemy, Article 16.
Costs to soldier arrested for debt, Part III, clause (*b*).
'Court Martial' defined, Part I, clause (*e*).
„ may sentence to dismissal, Article 3, 4, 76, 78, 82, 85, 89, 94.
„ conviction by, Article 53.
„ eight kinds of, Article 72.
„ not to award a minor punishment, Article 165.
„ to enquire into circumstances of absence of prisoner of war, Article 163.
Court Martial Books, extracts from, Article 117.
'Criminal force' defined, Part I, clause (*e*), and Appendix No. 1.
„ using to superior officer, Article 8.
„ using to persons bringing supplies to camp, Article 22.
Cruel offence, Article 65.
Cure, delaying, Article 58.
Death, punishment of, Articles 24, 76, 78, 130.
„ majority requisite to sentence of, Article 119.
„ awardable only by General Court Martial, Article 130.
„ form of sentence of, Article 141.
„ confirmation of sentence of, Articles 143, 174.
Death of President of Court Martial, Article 103.
Debt, prohibition of arrest of soldier for, Part III, clause (*b*).
Debts of deceased to be discharged, Article 177.
Declaration to person reported fit for duty, Article 1.
Decoration, making away with or pawning, Article 47.
Defacing medal or decoration, *ib.*
Defiling place of worship, Article 44.
Degradation, Articles 76, 78, 82.
„ General, District or Garrison Court Martial may sentence Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, and Warrant Officer to, Article 131.
Delaying cure, Article 58.
Delivery up of documents, Article 67.
„ of offender sentenced to transportation, Article 150.
„ of offender sentenced to imprisonment, Article 151.
Descendants of British-born subjects, not triable nor punishable under Articles, Part I, clause(*d*).
'Deserter' defined, Part I, clause (*e*).
„ knowingly harbouring, Article 28.
„ knowingly enlisting a, Article 29.
„ sale of effects of, Article 179.
„ capture of, Part III, clause (*d*).
Desertion, Article 10.
„ advising or persuading, see *Abetment.*
Desertion, triable only by General, District, or Garrison Court Martial, Article 95.
„ presumptive evidence of, Article 114.
„ procedure or trial for, Article 115.
„ sentence or trial for, Article 116.
„ information of, Part III, clause (*d*).
Despondency, using words intended to create in time of war, Article 23.
Destruction of medal or decoration, Article 47.
„ of Government property, Article 55.
Detachment Court Martial, appointment of, Article 87.
„ „ composition of, Article 88.
„ „ powers of, Article 89.
„ „ to be attended by a European Officer of not less than four years' service, Article 101.
„ General Court Martial, appointment of, Article 77.
„ composition and powers of, Article 78.
Detainment in arrest or confinement, Article 100.
„ of prisoners, Article 166.
Discharge from service, certificate of, Article 6.
„ re-enlistment without having received, Article 11.
„ of witnesses arrested in civil suits, Article 124.
Discipline, acts and omissions to prejudice of, Article 70.
Disease, feigning, producing or aggravating, Article 58.
Disgraceful conduct, Articles 58 to 66.
„ trial for, Article 66.
„ triable only by General, District, or Garrison Court Martial, Article 95.
„ General Court Martial may inflict penalties for, Article 130, clause (*b*).
„ forfeitures on conviction of, Articles 136, 137.
„ stoppages on conviction of, Article 138.
„ dismissal with ignominy for, Article 157.
Dishonest nature, committing offence of, see *Fraudulent offence.*
"Dishonestly" defined, Part I, clause (*e*), and Appendix No. I.
„ misappropriating, &c. Government property, Article 54.
Dismissal of Commissioned Officer, Articles 3, 130.
„ of person not a Commissioned Officer, Articles 4, 131, 132.
„ of attested person previously dismissed or discharged, Article 5.
„ sentence of, Articles 57, 76, 78, 82, 85, 89, 94.
„ General, District, or General Court Martial may sentence Sub-Assistant Surgeon, Hospital Assistant, Native Doctor, and Warrant Officer to, Article 131.
„ of person below rank of Warrant Officer, Article 132.
„ commutation of sentence of, Articles 145, 149.
„ with ignominy, Article 157.
„ for disgraceful conduct, publication of sentence of, Article 158.
Disobedience to lawful command, Article 9.
„ to orders, Article 70.
District Court Martial, powers of, Articles 57, 66, 82, 136.
„ „ conviction by, Article 57.
„ „ appointment of, Article 79.
„ „ composition of, Article 80, clause (*a*).
„ „ appointed under order in Council, composition of, Article 80, clause (*b*).
„ „ composition of, Articles 80, 81.
„ „ may try desertion and disgraceful conduct, Article 95.

District, Officer commanding, may direct trial by Regimental or Detachment Court Martial, of certain offences beyond ordinary jurisdiction, Article 95.
Disturbance of fair or market, neglecting to compensate for, Article 43.
,, of proceedings of Court Martial, Article 68.
Division, Officer commanding, may direct trial by Regimental or Detachment Court Martial, of certain offences beyond ordinary jurisdiction, Article 95.
Dockyard, sentry over, sleeping upon, or quitting his post, Article 12.
Documents, refusal to produce or deliver up, Article 67.
,, summons to produce, Article 122.
Drawing weapons against superior officer—see *Assault*.
Drivers, Articles apply to, Part I. clause (*d*), attestation of, Article 2.
Drummers, Articles apply to, Part I. clause (*d*), attestation of, Article 2.
Drunkenness—see *Intoxication*.
Effects of deceased to be secured, Article 176.
,, ,, sale of, Article 177.
,, of deserters, Article 179.
Embezzlement, Articles 54, 61.
Enemy, corresponding with, Article 16.
,, assisting, harbouring, or protecting, Article 17.
,, releasing, aiding, or suffering escape of, Article 18.
,, misbehaving in presence of, Article 19.
Enlistment in another regiment before discharge, Article 11.
,, of a deserter, Article 29.
Entry upon proceedings of permission to try grave offences, Article 95.
Equipments, making away with, or losing, Article 47.
,, embezzlement or fraudulent misappropriation of Government, Articles 54, 61.
,, furnishing false return of, Article 63.
Escape of prisoner, negligently suffering, Article 35.

See *State-prisoner*.

European Commissioned Officer in command, may hold summary Court Martial, Article 90.
,, ,, Officers, when General Court Martial may be composed of, Articles 75, 96, 97.
'European Officers' defined, Part I., clause (*e*).
,, Courts Martial may be directed to be composed of, Article 96.
,, claim to be tried by, Article 97.
,, conduct of proceedings of Court Martial composed of, Article 104.
,, affirmation to be taken by, Articles 108, 109, 110, 111, 112.
,, Americans, Christian European foreigners and their lineal descendants, triable only by Court Martial composed of, Part I., clause (*d*).
European Superintending Officer to attend Courts of Native Officers, Article 101.
Evidence to be taken on oath or affirmation, Articles 111, 128, of desertion, Article 114.
,, written reply of referee to be, Article 115.
,, of previous convictions and general character, Article 117.
,, receivable on a revision, Article 120.
,, before Summary Courts Martial, Article 128.
,, of unauthorized absence for two months, Article 162.
,, copy of record of declaration of Court of Enquiry admissible on trial for desertion, Article 162.
Exaction of carriage, porterage or provisions, Article 41.
Execution of sentence, Articles 150—158, of sentences of Summary Courts, Article 159—see *Death*.
'Extortion' defined, Part I., clause (*e*) and Appendix No. 1.
,, of money or property, Article 41.
Fair—see *Disturbance*.
Failure to rejoin, Article 31.
,, to attend parade, Article 32.
Failure to compensate person injured by subordinate, Article 43.
False alarm, intentionally occasioning in time of war, Article 23.
,, ,, in time of peace, intentionally causing, Article 46.
,, statement, on oath or affirmation, Article 56.
,, ,, obtaining pension or allowance by, Article 62.
,, entry, obtaining pension by, Article 62.
,, report, furnishing, Article 63.
,, return, furnishing, *ib*.
Farriers, Articles apply to, Part I. (*d*), attestation of, Article 2.
Feigning disease or infirmity, Article 58.
Field work, refusing to superintend or assist in, Article 38.
Fine for breach of cantonment rule, Part III, clause (*c*).
,, of Native follower for offence in breach of good order, Article 166.
Followers, Articles apply to, Part I. clause (*d*).
,, offending against good order, Article 166.
Force, Officer commanding a, may appoint a Detachment Court Martial, Article 87—see *Criminal Forse*.
Forcing safe-guard in time of war, Article 22.
,, sentry, Article 27.
Forfeiture on dismissal, of claim to pension, Articles 3, 4.
,, of arrears of pay or allowances, Articles 57, 76, 78, 82, 85, 89, 94, 137.
,, on conviction of disgraceful conduct, Articles 136, 137.
,, of pay during imprisonment, Article 154.
,, of good conduct pay, Articles 76, 78, 82, 94, 136, 165.
Fraudulent misapplication of Government property Articles 54, 61.
,, offence, Article 64.
'Fraudulently' defined, Part I., clause (*e*), and Appendix No. 1.
Funeral ceremonies of deceased to be discharged, Article 177.
Garrison Court Martial, conviction by, Article 57.
,, ,, ,, appointment of, Article 79.
,, ,, ,, composition of, Articles 81, 82.
,, ,, ,, powers of, Article 82.
,, ,, ,, may try desertion and disgraceful conduct, Article 95.
,, ,, ,, to be attended by a European Officer of not less than four years' service, Articles 101, 104.
,, ,, ,, may sentence to forfeiture of pay and pension, Article 136.
Garrison orders, neglecting, Article 70.
General Court Martial may sentence Commissioned Officers to dismissal, Article 3.
,, ,, ,, its jurisdiction over persons, Articles 3, 4, 7, 71, 76.
,, ,, ,, its jurisdiction over offences, Articles 7, 71, 76.
,, ,, ,, conviction by, Article 57.
,, ,, ,, appointment of, Article 73.
,, ,, ,, composition of, Articles 74, 101, 102.
,, ,, ,, when held under Order in Council, Article 75.
,, ,, ,, powers of, Articles 3, 4, 24, 53, 57, 66, 69, 70, 71, 76, 119, 130, 131, 132, 136, 137, 138, 139, 140.
,, ,, ,, to try munity, Article 95.
,, ,, ,, may try desertion and disgraceful conduct, *ib*.
,, ,, ,, to be attended by a Judge Advocate, Article 101.
,, ,, ,, procedure of Articles 103, 118, 120, 121, 141.
,, ,, ,, when it may pass sentence of death, Article 119.
,, ,, ,, may sentence Commissioned Officer to dismissal, suspension, or degradation, Article 130.

General Court Martial may sentence to forfeiture of pay and pension, Article 136.
,, ,, ,, to have cognizance of non-military offences beyond limits of British India, Article 171.
,, ,, ,, procedure of, in trial of such offences, Article 172.
,, ,, ,, to be attended in such trials by Judge Advocate, *ib.*
,, ,, ,, to award punishments in such cases in accordance with Indian Penal Code, Article 173.
,, ,, ,, confirmation of sentences of, in such cases, Article 174.
,, ,, ,, provisions as to persons sentenced by, for non-military offences, Article 175.
General Orders as to forfeiture of good conduct pay, Article 165.
Good conduct pay not forfeiture of by sentence, Articles 76, 78, 82, 94, 136.
,, ,, ,, not necessarily forfeited by sentence of minor punishment, Article 165.
,, ,, ,, forfeited on conviction by Court Martial, *ib.*
,, ,, ,, forfeiture of, in addition to other minor punishment, *ib.*
,, ,, ,, forfeited on conviction of disgraceful conduct, Article 136.
Good order and military discipline, offences against, Article 70.
,, ,, breach of, by followers, Article 166.
Goods belonging to Government, embezzlement or fraudulent misapplication of, Articles 54, 61.
'Government' defined, Part 1., clause (*e*).
,, may order transfer to military custody, Article 153.
,, ,, notification from, releasing military prisoner, Article 160.
,, not to give directions as to Courts Martial in places subject to another Government, Part III., clause (*i*).
See *Local Government*.
Government of Fort St. George or Bombay may order dismissal of Commissioned Officer, Article 3, or of any other person subject to the Articles, Article 4.
,, ,, ,, may authorize officer in actual command to appoint General, District, or Garrison Courts Martial, Article 73, clause (*c*), Article 79, clause (*c*).
,, ,, ,, may direct that any Court Martial shall be composed of European Officers, Article 96.
,, ,, ,, may authorize any officer to appoint Courts Martial so composed, *ib.*
,, ,, ,, may authorize officer in actual command to dispose of sentences, Article 142, clause (*d*).
,, ,, ,, may order removal of prisoner to military custody or from one jail to another, Article 153.
,, ,, ,, may grant pardons for military offences, Article 160.
,, ,, ,, may extend Article providing for punishment of Native followers, Article 166.
,, ,, ,, may make orders and issue warrants, Part III. clause (*h*).
,, ,, ,, may authorize Officer empowered by order in Council to confirm, &c. sentences to refer them for orders to Commander-in-Chief of the Presidency, Part III. clause (*h*).
Governor General in Council may order dismissal of Commissioned Officer, Article 3, or of any other person subject to the Articles, Article 4.
,, ,, ,, may authorize officer in actual command to appoint General, District, or Garrison Courts Martial, Article 73, clause (*c*), Article 79, clause (*c*).
,, ,, ,, may authorize Commander-in-Chief in India to empower Officer commanding certain Native troops to appoint General, District or Garrison Courts Martial, Articles 73, clause (*d*), 79, clause (*c*).
,, ,, ,, may direct that any Court Martial shall be composed of European Officers, Article 96.
,, ,, ,, may authorize any Officer to appoint Courts Martial so composed, *ib.*
,, ,, ,, may authorize Officer in actual command to dispose of sentences, Article 142, clause (*d*).
,, ,, ,, may order prisoner in jail to be transferred to military custody removed from one jail to another, Article 153.
,, ,, ,, may grant pardons, for military offences, Article 160.
,, ,, ,, to sanction prescription of minor punishments, Article 165.
,, ,, ,, may authorize Officer empowered by Order in Council to confirm, &c. sentences to refer them for orders to Commander-in-Chief of Presidency, Part III., clause (*h*).
,, ,, ,, may direct that Native troops serving out of their own Presidency shall remain subject to the Commander-in-Chief of such Presidency, Part III, clause (*g*).
,, ,, ,, may make orders and issue warrants, Part III., clause (*h*).
,, ,, ,, may make rules for guidance of officers, Part III., clause (*j*).
Grass-cutters, Articles apply to, Part I. clause (*d*).
,, attestation of, Article 2.
Gratification, requiring or accepting, Article 45.
Grave offences, trial of, by Courts of inferior jurisdiction, Article 95.
'Grievous hurt' defined, Part I. Clause (*e*), and Appendix No. 1.
,, voluntarily causing, with intent to produce unfitness for service, Article 59.
Guard, plunder, destruction or injury by person on, Article 13.
,, abandoning or delivering up, Article 14.
Hanging, Article 141.
Harbouring enemy, Article 17.

Harbouring deserters, Article 28.
Hard labour, commutation of sentence of, Article 148.
„ for disgraceful conduct publication of sentence, Article 158.
Head-quarters, monthly returns of trials furnished to, Article 95.
Hindu Officers, affirmation to be taken by, Articles 109, 112.
Hindus, their affirmation on enlistment, Article 1.
„ at Court Martial, Articles 109, 111, 112.
Horse, making away with or losing, Article 47.
Hospital Assistant, Articles apply to, Part I. clause (*d*.)
„ „ attestation of, Article 2.
„ „ guilty of unbecoming conduct, Article 25.
„ „ formation of Court for trial of, Article 81.
„ „ not triable by Summary Courts, Article 92.
„ „ sentences on, Article 131.
„ „ not triable by Court inferior to a District or Garrison Court Martial, *ib*.
„ „ commutation of sentence of dismissal on, Article 145.
„ „ confirmation of sentence on, Article 146.
„ „ not liable to minor punishment, Article 165.
Hospital Attendants, Articles apply to, Part I. clause (*d*).
House-breaking in time of war, Article 22.
„ „ in time of peace, Article 42.
'Hurt' defined, Part I., clause (*e*), and Appendix No. 1.
„ voluntarily causing with intent to produce unfitness for service, Article 59.
Hyderabad Contingent—see *Officer commanding Force not attached to a Presidency*.
Ignominy, dimissal with, Article 157.
Illegal omission—see *Abetment*.
Ill-treating subordinate, Article 40.
Ill-treatment, not causing reparation for, Article 43.
Impeding provost marshal, &c., Article 39.
Imprisonment for fourteen years, Articles 24, 76, 130, 143, 144.
„ for three years, Article 57.
„ may be inflicted by any Court Martial, on any person below rank of warrant officer, Article 132.
„ limit of, Article 133.
„ sentence of, on offender already under sentence of imprisonment, Article 140.
„ substituted for sentence of death, Article 143.
„ substituted for sentence of transportation, Article 144.
„ with hard labour commutation of sentence of, Article 148.
„ with hard labour, execution of sentence of, Article 151.
„ forfeiture of pay and allowances during, Article 154.
„ of Native follower for offence in breach of good order, Article 166.
„ for breach of cantonment rules, Part III., clause (*e*).
Indecent offence, Article 65.
Infirmity, feigning, producing or aggravating, Article 58.
Injuring Government property, Article 55.
„ oneself or another—see *Hurt*.
Insolence to superior officer, Article 37.
Instigation—see *Abetment*.
Instruments, making away with or losing, Article 47.
„ embezzlement or fraudulent misappropriation of Government, Articles 54, 61.
Insubordination to superior officer, Article 37.
„ in presence of Court Martial, Article 68.
Insulting religion, Article 44.
„ Court Martial, Article 68.
Interpreter to Courts Martial, appointment of, Article 102.
„ not to vote, Articles 102, 125.
Interpreter, oath to be taken by, Articles 108, 112.
„ oath to be administered by, Articles 109, 110, 112.
„ to attend Summary Court Martial, Article 125.
„ to make oath or affirmation, at such Court, Article 127.
„ to sign proceedings of such Court when closed, *ib*.
Interruption to Court, Article 68.
Intoxication on duty, Article 26.
Inventory of effects of deceased, Article 176.
Jail, delivery of offender to Officer in charge of, Articles 150, 151, 166.
„ Commander-in-Chief in India, or of any Presidency, may direct offender to be imprisoned in any, Article 152.
„ release of prisoner by Officer in charge of, Article 161.
'Judge Advocate' defined, Part I., clause (*e*), need not be appointed to General Court Martial appointed under order in Council, Article 101.
„ to attend other General Courts Martial, and conduct proceedings, Article 101.
„ oath or affirmation of, Articles 110 and 112.
„ may summon witnesses for General Court Martial, Article 122.
„ to attend General Courts Martial for trial of non-military offences, Article 172.
Judgment for debt, soldiers' arms, &c. exempt from seizure in satisfaction of, Article III, clause (*b*).
Junior Member of Court to vote first, Article 118.
Labourers, Articles apply to, Part I, clause (*d*).
Lascars, Articles apply to, Part I, clause (*d*).
„ attestation of, Article 2.
Leave—see *Absence, Overstaying*.
Limit of imprisonment, Articles 133, 140.
„ of solitary confinement, Article 134.
„ of stoppages, Article 139.
Limitation of trials for military offences, Article 98.
„ of powers of Government and Commander-in Chief of a Presidency, Part III., clause(*i*).
Line of march, drunkenness on, Article 26.
„ trial of offences committed on, Articles 85, 87, 89, 95, 129.
Local Government may give order as to transportation, Article 150.
„ may order prisoner's transfer or removal, Article 153.
„ may sentence Native followers to fine, imprisonment, or corporal punishment, Article 166.
Loss of standing, Articles 76, 78, 82, 85, 89, 94, 130, clause (*d*), 131.
Magazine, sentry over, sleeping upon or quitting his post, in time of war, Article 12.
Magistrate, witnesses not amenable to military authority to be summoned through, Article 122.
„ persons not subject to Articles and committing contempts to be delivered to, Article 123.
„ person accused of non-military offences to be delivered to nearest, Article 170.
„ suspected deserters to be brought before, Part III. clause (*d*).
Mahouts, Articles apply to, Part I. clause (*d*).
„ attestation of, Article 2.
Maiming oneself or another, Article 59.
Malingering, Article 58.
Market—see *Disturbance*.
Medal, selling, pawning, destroying or defacing, Article 47.
Military Guard, Native followers may be confined in, Article 166.
Military stores, embezzlement or fraudulent misappropriation of Government, Articles 54, 61.
Military work, refusal to aid in making, Article 38.

Minor punishments, Article 165.
Misbehaviour in presence of enemy, Article 19.
Mitigation of sentences of Courts Martial, Article 142, clause (*i*).
,, of sentence of reduction and corporal punishment or imprisonment, Article 149.
Money, embezzlement or fraudulent misapplication of Government, Articles 54, 61.
,, furnishing false return of, Article 63.
Musicians, Articles apply to, Part I. clause (*d*).
,, attestation of, Article 2.
Musical instruments, making away with or losing, Article 47.
Mussulman officers, affirmation to be taken by, Articles 109, 112.
Mussulmans, affirmation of, on enlistment, Article 1, at Courts Martial, Articles 109, 111, 112.
Mutiny, beginning or concealing, Article 7.
,, not triable by Summary Court Martial, Article 93.
,, triable by General Court Martial, Article 95.
Native Commissioned Officers, dismissal of, Article 3.
,, ,, ,, persons not liable to trial by Courts composed of, Part I, clause (*d*), Article 92.
,, ,, ,, when General Court Martial may be composed of, Article 75.
,, ,, ,, triable only by General Court Martial, Articles 92, 130.
,, ,, ,, sentences on, Article 92.
,, ,, ,, not liable to minor punishments, Article 165.
Native Doctors, Articles apply to, Part I. clause (*d*).
,, attestation of, Article 2.
,, behaving unbecomingly, Article 25.
,, District or Garrison Court Martial for trial of, Article 81.
,, not triable by Summary Court Martial, Article 92.
,, not triable save by General, District, or Garrison Court Martial, sentences on, Article 131.
,, commutation of sentence of dismissal on, Article 145.
,, confirmation of sentence on, Article 146.
,, not liable to minor punishment, Article 165.
Native followers committing breach of good order, Article 166.
Native Troops belonging to one Presidency and serving in another, Part III. clause (*g*).
,, not attached to Presidency—see *Governor General in Council.*
Neglect of garrison or other orders, Article 70.
See *Failure.*
Non-Commissioned Officers, Articles apply to, Part I. clause (*d*).
,, ,, dismissal of, Articles 4, 5.
,, ,, reduction of, to ranks, Article 132.
,, ,, may be lowered in list, *ib.*
,, ,, to be sentenced to reduction to ranks before being sentenced to imprisonment or corporal punishment, Article 135.
Non-military offences, procedure in case of, Articles 170, 175.
Notification of annulment, remission or pardon, Article 161.
Not rejoining, trial for, Articles 31, 115.
Oath of Sikhs reported fit for duty, Article 1.
,, of Interpreter, Articles 108, 112.
,, of President and Members of Court Martial, Articles 109, 112.
,, of Interpreter at Summary Court Martial, Article 127.
,, of Commanding Officer holding Summary Court Martial, *ib.*
Offences not specified, cognizable by Court Martial, Article 70.
Officer behaving in an unbecoming manner, Article 25.
,, complaints against, Article 167.
Officer commanding a force not attached to a presidency—
,, may dismiss any person other than a Commissioned Officer, Article 4.
,, may appoint General Court Martial when authorized by warrant, Article 73, clause (*e*).
,, may appoint Detachment Court Martial when authorized by warrant, Article 77, clause (*c*).
,, may appoint District and Garrison Courts Martial when authorized by warrant, Article 79, clause (*e*).
,, may appoint interpreters, Article 102.
,, may set aside trials by Summary Court Martial, Article 129.
,, sentences not to be carried out till confirmed by, Article 142, clause (*d*), Article 146.
,, may mitigate, remit, commute, or annul sentences, Article 142, clause (*i*).
,, may commute sentence of dismissal on Commissioned Officers, &c., Article 145.
,, his powers as to prisoners and their removal or release, Articles 152, 161.
,, his confirmation of recommendation that person absent as prisoner of war shall receive arrears, Article 163.
,, may reduce Non-Commissioned Officers to ranks, Article 164.
Officer commanding a Division or District—
,, may appoint General Court Martial, when authorized by warrant, Article 73, clause (*d*).
,, may appoint Detachment General Court Martial when authorized by warrant, Article 77, clause (*b*).
,, may appoint District Court Martial and Garrison Court Martial when authorized by warrant, Article 79, clause (*b*).
,, case of grave offence when to be submitted to orders of, Article 95.
,, to appoint interpreters, Article 102.
,, proceedings of Summary Court Martial to be forwarded to, Article 129.
,, sentences when not to be carried into effect unless disposed of by, Article 142, clause (*b*).
,, his power to mitigate, remit, or annul sentences, Article 142, clause (*i*).
,, his power to commute sentence of dismissal on Commissioned Officers, &c., Article 145.
,, release of prisoners on receiving notification under hand of, Article 161.
Officer commanding a Native Force when acting under an Order in Council—
,, may appoint General Courts Martial, Article 73, clause (*c*).
,, may appoint District and Garrison Courts Martial, Article 79, clause (*c*).
,, to appoint interpreters to Courts Martial, Article 102.
,, sentences not to be carried into effect until disposed of by, Article 142, clause (*c*).
,, may mitigate, remit, commute, or annul sentences, Article 142, clause (*i*).
,, may commute sentences of dismissal on Commissioned Officers, Article 144.
Officer commanding a Force out of British India and not in allied territory—
,, when he may appoint Detachment General Courts Martial, Article 77.
,, may appoint interpreters to Courts Martial, Article 102.
,, sentences not to be carried into effect until confirmed by, Article 142, clause (*e*).
,, may mitigate, remit, commute, or annul sentences, Article 142, clause (*i*).
,, may commute sentences of dismissal on Commissioned Officers, Article 145.

Officer Commanding a Force out of British India and not in allied territory—
,, may convene General Court Martial for trial of non-military offences committed out of British India, Article 171.
,, his confirmation of sentences of General Courts Martial trial by non-military officers, Article 174.
Officer commanding Troops in the Field—
,, may appoint Provost Marshal, Article 168.
,, his orders to Provost Marshal as to corporal punishment, Article 169.
Officer, commanding a Regiment—
,, to make usual declaration or charge to recruits, Article 1.
,, to furnish certificate to person dismissed or discharged, Article 6.
,, may appoint Regimental Court Martial, Art. 83.
,, may appoint Summary Court Martial, Article 90.
,, may constitute Summary Court Martial, Article 91.
,, persons triable by him, Article 92.
,, when to refer to superior authority before holding Summary Court Martial, Article 93.
,, to submit for orders cases of trial of grave offences by inferior courts, Article 95.
,, when to order accused to be placed in arrest or confinement, Article 100.
,, may interpret at Summary Court Martial, Article 125.
,, his oath or affirmation at Summary Court Martial, Article 127.
,, to record previous convictions and general character of offender, Article 128.
,, to sign proceedings of Summary Court Martial, Article 129.
,, to confirm or otherwise dispose of sentences, Article 142, clauses (*f*), (*i*).
,, may execute sentences of a Summary Court Martial forthwith, Article 159.
,, to record declaration of Court of Enquiry as to an unauthorized absence from duty, Article 162.
,, his power to punish Native followers, Article 166.
,, to secure and cause inventory to be made of deceased's effects, Article 177.
,, remittal of surplus amount in hands of, Article 178.
,, to remit surplus proceeds of effects of deserters, Article 179.
,, to give written information of desertion, Part III, clause (*d*).
,, his appliction for apprehension and delivery of persons accused of military offences, Part III, clause (*e*).
Officer commanding a Detachment, Station or detached force to furnish certificate to person dismissed or discharged, Article 6.
,, may appoint a Regimental Detachment Court Martial, Article 86.
,, may appoint a Detachment Court Martial, Article 87.
,, may appoint Summary Court Martial, Art. 90.
,, may constitute Summary Court Martial, Article 91.
,, persons triable by him, Article 92.
,, offences triable by him, Article 93.
,, to submit for orders cases for trial of grave offences by inferior courts, Article 95.
,, when to order accused to be placed in arrest or confinement, Article 100.
,, when to appoint interpreter, Article 102.
,, may be interpreter at Summary Court Martial, Article 125.
,, his oath or affirmation at Summary Court Martial, Article 127.
,, to record previous convictions and general character of offender, Article 128.
Officer commanding a Detachment, Station, or detached force to confirm or otherwise dispose of sentences Article 142, clauses (*g*), (*i*).
,, may carry into effect sentences of Summary Courts Martial forthwith, Article 159.
,, may punish offences of Native followers in breach of good order, Article 166.
,, to secure and cause inventory to be made of deceased's property, Article 176.
,, to sell deceased's effects and discharge his debts, Article 177.
,, to remit surplus proceeds of deceased's estate, Article 178.
,, to remit surplus of deserters' effects, Article 179.
,, his written application for apprehension and delivery of military offender, Part III, clause (*e*).
Officer commanding at a post or on march—
,, to cause reparation to be made to injured person, Article 43.
,, may punish offences of Native followers in breach of good order, Article 166.
Officiating Judge Advocate—see *Judge Advocate.*
Omission to give information of mutiny, Article 7.
,, to inform superior officer of discovery of correspondence with enemy, Article 16.
,, to give notice of a person having deserted, or of a deserter having been received, Article 28.
,, of true statement, &c., obtaining pension or allowance by, Article 62.
,, to make or send returns or reports, Article 63.
,, to attend Court Martial as witness, Article 67.
,, to prejudice of discipline, Article 70.
Order in Council authorizing officers to appoint General Courts Martial, held under Articles 73, 75, 79, 80, 96, 97, 101, 104, 107, 119, 142, clause (*e*).
See *Abetment.*
Order, Members of Court Martial are to preserve, Article 118.
Orders, neglecting, Article 70.
,, power to make, Part III. clause (*h*).
Ordnance establishment, Summary Court Martial may be held by European officer in charge of, Article 90.
Overstaying leave, Article 30.
,, procedure on trial for, Article 115.
Panchâyats, saving of regulations constituting and guiding, Part I, clause (*f*).
Panjâb Frontier Force—see *Officer commanding Force not attached to a Presidency.*
Parade, intoxication on, Articles 26.
,, failing to appear at, Article 32.
Parade, quitting without leave, Article 33.
Pardon, re-admission after, Article 156.
,, grant of, Article 160.
Pawning medal or decoration, Article 47.
Pay and allowances, forfeiture of arrears of, Articles 57, 76, 78, 82, 85, 89, 94, 137.
,, forfeiture of, during confinement, Article 154.
,, prisoner of war during absence, not entitled to, Article 163.
Penal Code, abetment within meaning of, Article 71, and Appendix No. 2.
,, procedure in case of offence against, in British India, Article 170.
,, offences against, without British India, Articles 171—175.
,, definitions from, Appendix No 1.
Penal Servitude—see *Transportation.*
Pension, claim to, forfeited on dismissal, Articles 3, 4.
,, obtaining by false statement, &c., Article 62.
,, forfeiture of claim to, Articles 76, 78, 82, 94.
,, when forfeited on conviction of disgraceful conduct, Article 136.
,, forfeited by person transported or imprisoned with hard labour, Article 156.
,, re-admission to, on annulment of sentence or pardon, *ib.*
,, on discharge, forfeiture of, Article 136.

Permission to try grave offences by inferior Court Martial, Articles 85, clause (*b*), 95.
Place of trial for offences against Articles, Article 98.
„ of worship defiling, Article 44.
„ of imprisonment, Article 152.
Plunder, leaving post or colours in time of war in search of, Article 20.
„ breaking into house for, in time of war, Article 22.
Plundering fields, gardens, or other property in time of war, Article 22.
„ in time of peace, Article 42—see *Sentry*.
Police in cantonments, saving of regulations defining power of officer in charge of, Part I., clause (*f*).
„ may arrest persons suspected to be subject to Articles, travelling without certificate, Part III., clause (*d*).
„ to take steps to capture deserter, Part III, clause (*d*).
Political authority to take steps to capture deserter, Part III., clause (*d*).
Political officer to publish sentence for disgraceful conduct, Article 158.
Porterage, exacting, Article 41.
Present, requiring or accepting, Article 45.
President of Court Martial composed of European Officers, to conduct proceeding, Article 103.
„ when to interpret, Article 102.
„ senior officer to sit as, Article 103.
„ death or absence of, *ib.*
„ has a casting vote on minor points, Article 118.
Presumption of desertion, Article 114.
„ as to signatures, Part III., clause (*f*).
Prevarication of witness, Article 67.
Prisoner, refusal to receive, Article 35.
„ unauthorised release of, *ib.*
„ suffering escape of, *ib.*
„ of war, arrears due to, Article 163.
„ „ service which may be reckoned by, *ib.*

See *State prisoner*.

Privilege of witnesses, Article 124.
Procedure, at trials by Court Martial, Articles 103 to 121.
Production of documents, Articles 67, 122.
Protecting enemy, Article 17.
Provisions, criminal force to persons bringing, Article 22.
„ exacting, Article 21.
„ embezzlement or fraudulent misappropriation of Government, Articles 54, 61.
Provost Marshal, impeding or refusing to assist, Article 39.
„ appointment of, Article 168.
„ duties and powers of, Article 169.
Publication of sentence and orders in cases of disgraceful conduct at offender's place of residence, Article 158.
Quitting in time of war, guard, picquet, party, or patrol, Article 21.
„ parade without leave, Article 33.
„ division, regiment, &c., on line of march, *ib.*
„ in time of peace guard, picquet, or patrol, Article 34.
„ post without leave—see *Sentry*.
Reading Articles to recruits, Article 1.
„ to persons attested, Article 2.
„ at head of regiment, Part III. clause (*k.*)
Reading names of President and Members of Court Martial, Article 107.
Re-admission, not of person transported or imprisoned, Article 156.
„ except in case of illegal sentence or pardon, *ib.*
'Reason to believe' defined, Part I., clause (*e*), and Appendix No. 1.
„ that a person is a deserter, Article 29.
„ that property is stolen, Article 60.
„ that property was dishonestly misappropriated or converted, Article 61.
Re-assembly of Court Martial, time of, Article 166.
Receipt of Government property embezzled or fraudulently misapplied, Articles 54, 61.
„ of stolen property, Article 60.
„ of property dishonestly misappropriated or converted, Article 61.
Recommendation that prisoner of war should receive arrears and reckon service, Article 163.
Record in regimental books of declaration of Court of Enquiry, Article 162.
Recruits, Articles to apply to unattested, Part I., clause (*d*).
„ Articles to be read to, Article 1.
„ declaration or charge to be made to, *ib.*
„ affirmation to be made by, *ib.*
Reduction to ranks of Non-Commissioned Officer, Articles 132, 164.
„ to ranks to precede imprisonment or corporal punishment of Non-Commissioned Officer, Article 135.
„ to ranks ordered in commutation, Article 149.
Re-enlistment without having received discharge, Article 11.
Reference of sentence to Commander-in-Chief of Presidency, in case tried under Orders in Council, Part III, clause (*h*).
„ in other cases, Articles 142, clauses (*a*), (*e*), 146, 163, 174.
„ before trial by Summary Court Martial, Article 93.
Refusal to receive prisoner, Article 35.
„ to superintend or assist in military work, Article 38.
„ to assist Provost Martial or Assistant Provost Marshal, Article 39.
„ to attend, or be sworn, or answer questions, or produce documents before Court Martial, Article 67.
Regimental books, record in, in case of absence, Article 162.
„ necessaries, making away with or losing, Article 47.
Regimental Court of Enquiry in case of absence for two months, Article 162.
Regimental Court Martial, appointment of, Article 83.
„ „ composition of, Article 84.
„ „ powers of, Article 85.
„ „ to be attended by a European Officer of not less than four years' service, Article 101.
Regimental debts, payment of, Articles 177, 179.
„ Detachment Court Martial, appointment of, Article 86.
„ composition of, Article 88.
„ powers of, Article 89.
Regulations defining office and powers of Cantonment Magistrates, &c., saved Part I., clause (*f*).
Rejoining regiment, failure in, Article 31.
Release of State prisoner, Article 18.
„ of prisoner without authority, Article 35.
„ „ by officer in charge of Jail, Article 161.
Religious feelings, wounding, Article 44.
Remission of sentences of Courts Martial, Article 142, clauses (*e*), (*h*), (*i*).
„ „ by Government or Commander-in-Chief of punishment, Article 160.
Remittance to General Treasury of residue of deceased's effects, Article 178.
„ of residue of deserter's effects, Article 179.
Removal of prisoners, Articles 152, 153.
Repeal of Acts, Part I., clause (*c*).
Report of ill-treatment, disturbance, &c., Article 43.
„ furnishing false, Article 63.
„ by Provost Marshal, Article 169.
Representative of deceased, residue to be paid to, Article 177.
Restoration to pardoned prisoner of advantage forfeited, Article 160.

Restoration to prisoner of war, Article 163.
Reswearing members of Court and witnesses, Article 113.
Retainer of Government property embezzled, &c., Articles 54, 61.
,, of stolen property, Article 60.
Retreat-beating, absence from camp after, Article 52.
Re-trial, bar of, Part III., clause (*a*).
Return, furnishing false, Article 63.
Revision of finding or sentence, Article 120.
Rigorous imprisonment—see *Hard labour*.
Riot, failure to make reparation for, or report of, Article 45.
Risáldár Major, precedence of, Article 105.
,, to take rank with Súbahdárs, *ib*.
Risaldárs, precedence of, *ib*.
Rules for guidance of Officers, power to make, Part III., clause (*j*).
Sale of effects of deceased, Article 177.
,, of deserter's effects, Article 179.
Sardár Bahádurs, precedence of, Article 105.
Sedition, Article 7.
Selling medal or decoration, Article 47.
Sending proceedings, Article 129.
Sentry, sleeping on post in time of war or alarm, Article 12.
,, quitting post without leave in time of war or alarm, *ib*.
,, plundering, destroying, or injuring property in his charge, Article 13.
,, striking or forcing, Article 27.
,, sleeping on post in time of peace, Article 50.
,, quitting post without leave in time of peace, *ib*.
'Service,' defined, Part I., clause (*e*), prisoner of war during absence not entitled to, Article 163.

See *Dismissal*.

Serving summons on witness, Article 122.
Setting aside trial by Summary Court Martial, Article 129.
,, by ordinary Court Martial, Article 142, clause (*i*).
Ship, trial of offences committed on board, Articles 85, 87, 129.
Shooting to death, sentence of, Article 141.
Short Title, Part 1, clause (*a*).
Signature to certified extracts from Court Martial Books, Article 117.
,, to proceedings of Summary Court, Article 129.
,, presumption as to, Part III, clause (*b*).
Sleeping on post—see *Sentry*.
'Soldiers,' Articles apply to, Part I. clause (*d*).
,, defined, Part I., clause (*e*).
,, attestation of, Article 2.
,, not to be arrested for debt, Part III., clause (*b*).
Solitary confinement, limit of, Article 134.
State—see *Conspiracy*.
State prisoner, sentry over, sleeping upon, or quitting his post, Article 12.
,, unauthorizedly releasing, or aiding, or suffering escape of, Article 18.
Station, officer commanding, may appoint Detachment Court Martial, Article 87.
Stealing money or goods, Article 60.
Stoppages, sentence of, Articles 76, 78, 82, 85, 89, 94, 138.
on conviction of disgraceful conduct, Article 138.
,, extent of, Article 139.
Stores, furnishing false return of, Article 63.
Striking superior Officer, Article 8, or forcing a sentry, Article 27.
,, subordinate, Article 40, and see *Assault*.
,, off strength of regiment, corps, or department, Article 155.
Súbhadár Major, precedence of, Article 105.
Sub-Assistant Surgeon, Articles apply to, Part I. clause (*d*).
,, attestation of, Article 2.
Sub-Assistant Surgeon behaving unbecomingly, Article 25.
,, District or Garrison Court Martial for trial of, Articles 81, 82.
,, not triable by Summary Court Martial, Article 92.
,, not triable by Court inferior to District or Garrison Court Martial, Article 131.
,, sentences on, *ib*.
,, commutation of sentence of dismissal on, Article 145.
,, confirmation of sentence on, Article 146.
,, not liable to minor punishment, Article 165.
Subordinate, striking or otherwise ill-treating, Article 40.
Subsistence of prisoner, Article 154.
Suicide, attempting to commit, Article 48.
Summary Court Martial, who may hold, Article 90.
,, approval of sentence of, Article 90.
,, constitution of, Article 91.
,, persons triable by, Article 92.
,, offences punishable by, Article 93.
,, powers of, Article 94.
,, to be attended by two other Commissioned Officers, *ib*.
,, no challenge at, Article 107.
,, persons to attend, Article 125.
,, to be attended by an interpreter, *ib*.
,, record of proceedings of, Article 126.
,, oaths of Interpreter and Officer holding, Article 127.
,, evidence taken before, Article 128.
,, proceedings of, to be signed and forwarded to Officer commanding Division or District, Article 129.
,, sentence of, need not be confirmed, Article 142.
,, execution of sentences of, Article 159.
,, setting aside trial by, *ib*.
Summoning witnesses, Article 122.
Superintending Officer, Article 101.
,, when to interpret, Article 102.
,, affirmation to be taken by, Articles 110, 112.
Superintendents of Military Bazaars, saving of regulations defining office and powers of, Part I., clause (*f*),
Surgical instruments, making away with or losing, Article 47.
Suspension from rank, pay, and allowances, sentence of, on Commissioned Officers, Articles 76, 130, clause (*d*).
,, on Sub-Assistant Surgeon, Hospital Assistant, Native Doctor and Warrant Officer, Articles 76, 82, 131.
Sutlers, Articles apply to, Part I. clause (*d*).
Sword—see *Weapon*.
Syces, Articles apply to, Part I. clause (*d*).
,, attestation of, Article 2.
Tattoo—see *Absence*.
Technical grounds, trial by Summary Court Martial not to be set aside on mere, Article 129.
Theft, committing, Article 60.
,, defined, Appendix.
Time of trial, by Court Martial and adjourments, Article 106.
Tools, making away with or losing, Article 47.
,, embezzlement or fraudulent misappropriation of Government, Articles 54, 61.
Treasure, sentry over, sleeping upon, or quitting his post, Article 12.
Translations of the Articles of War, Part III, clause (*k*).
Transportation, Articles 24, 76, 78, 130, clauses (*a*), (*d*).

Transportation, sentence of, an offender already under sentence, Article 140.
„ substituted for sentence of death, Article 143.
„ confirmation of sentence of, Article 144.
„ penal servitude when substituted for, *ib.*
„ imprisonment substituted for, *ib.*
„ execution of sentence of, Article 150.

See *Re-admission.*

Trespass, not making reparation for, Article 43.
Trials, limitation of, Article 98.
„ place of, Article 99.
„ time of, Article 106.
„ adjournment of, *ib.*
„ proceedings in, under repealed Articles, Part I, clause (*e*).
Trumpeters, Articles apply to, Part I. clause (*d*).
„ attestation of, Article 2.
Unattested recruits, Articles apply to, Part I, clause (*d*).
Unbecoming behaviour, Article 25.
Unnatural offence, Article 65.
Violence to superior officer, Article 8.
„ to persons bringing provisions to camp in time of war, Article 22.
„ in presence of Court Martial, Article 68.

See *Assault.*

Voluntarily causing hurt, with intent to disqualify for service, Article 59.
Votes of members of Court Martial how given, Article 118.
„ decision to be according to majority of, *ib.*
„ decision in case of equality of, *ib.*
„ majority of, requisite for sentence of death, Article 119.
Warrant authorizing Officer to appoint General Court Martial, Article 73, clauses (*c*), (*e*).
„ Detachment General Court Martial, Article 77, clause (*c*).
Warrant authorizing Officer to appoint District or Garrison Court Martial, Article 79, clauses (*c*), (*e*).
„ of commitment, in cases of transportation or hard labour, Articles 150, 151.
„ for imprisonment of Native followers, Article 166.
„ for imprisonment for offences against cantonment rules, Part III, clause (*e*).
„ power to issue, Part III: clause (*h*).
„ to remain in force notwithstanding repeal, Part I, clause (*e*).
Warrant Officers, Articles apply to, Part I, clause (*d*).
„ attestation of, Article 2.
„ behaving unbecomingly, Article 25.
„ not triable by Summary Court Martial, Article 92.
„ may be dismissed, suspended, degraded, or lowered in list, by General, District, or Garrison Court Martial, Article 131.
„ dismissal of persons below rank of, Article 132.
„ commutation of sentence of dismissal on, Article 145.
„ confirmation of sentence on, Article 146.
„ not liable to minor punishment, Article 165.
„ Provost Marshal not to flog, Article 169.
„ District or Garrison Court Martial for trial of, Articles 181, 182.
Watchword, betraying, Article 15.
Weapon, carrying offensive, Article 49.
Witnesses, forms of oath or affirmation of, Articles 111, 112, Part III, clause (*j*).
Work—see *Military work.*
Wounding religious feelings, Article 41.
Wrongful gain, Article 64 defined, Appendix, Part I.
„ loss, *ib.*, defined, Appendix Part I.

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