



Bombay Government Gazette.

Published by Authority.

THURSDAY, 23RD AUGUST 1894.

Separate paging is given to this Part, in order that it may be filed as a separate compilation.

PART VI.

BILLS OF THE GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 16th August 1894 :

No. 10 of 1894.

THE INDIAN ARTICLES OF WAR BILL.

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*A Bill to amend the Articles of War for the
government of Her Majesty's Indian Forces.*

WHEREAS it is expedient to amend the Articles of War for the government of Her Majesty's Indian Forces; It is hereby enacted as follows:

1. (1) This Act may be called the Indian Articles of War Act, 1894; and
- (2) It shall come into force on the first day of 1894.
2. Part I, clause (c), of the Indian Articles of War (hereinafter called "the said Articles," is hereby repealed.
3. For Part I, clause (d), of the said Articles Substitution of new clause the following shall be for clause (d) of Part I. substituted, namely:

“(d).—Application of Articles.

“These Articles shall apply to all—

- (a) persons to whom they actually apply at present;
- (b) persons commissioned or gazetted as Native officers, or gazetted as warrant officers, of Her Majesty's Indian Forces;
- (c) medical subordinates;
- (d) persons attested under these Articles;
- (e) unattested recruits;
- (f) persons enrolled under these Articles;

- (g) persons, not otherwise subject to military law, who, on active service, in camp, on the march, or at any frontier post specified by the Governor General in Council by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, Her Majesty's Indian Forces:

Provided as follows:

if any person claims to belong to a class to which the Army Act is, and these Articles are not, applicable, the burden of proving that he belongs to that class shall lie upon him.”

4. For Part I, clause (e), of the said Articles Substitution of new the following shall be clause for clause (e) of substituted, namely; Part I.

“(e).—Definitions.

“In these Articles, unless there is something repugnant in the subject or context,—

- (1) ‘notification’ means a notification published in the official Gazette;
- (2) ‘prescribed’ means prescribed by rules made by the Governor General in Council or by any authority empowered by him in this behalf;
- (3) ‘British officer’ means an officer holding a commission in Her Majesty's land forces, but does not include an honorary commissioned officer;
- (4) ‘Native officer’ means an officer commissioned or gazetted as an officer holding a Native rank in Her Majesty's Indian Forces;
- (5) ‘officer’ means a British officer or Native officer, but does not include a warrant officer or non-commissioned officer;
- (6) ‘medical subordinate’ means a senior hospital assistant, a hospital assistant of the first, second or third class, and a sub-hospital assistant, but does not include an officer;
- (7) ‘superior officer,’ when used in relation to a person subject to these Articles, includes a warrant officer, a non-commissioned officer and an acting non-commissioned officer;
- (8) ‘soldier’ includes a non-commissioned officer and any armed person doing duty in the ranks of Her Majesty's Indian Forces;
- (9) ‘recruit’ means a person enlisted for enrolment in any corps or department as a soldier;
- (10) ‘corps’ means a unit of command, such as a regiment of cavalry, a regiment or battalion of infantry, a battery of artillery, and any other separate body of troops which is declared by the Governor General in Council by general or special order to be a corps for the purposes of these Articles; it also includes an army hospital corps and a transport corps;
- (11) ‘department’ includes any division or branch of a department;
- (12) ‘military reward’ means any gratuity or annuity for long service or good conduct; it also includes any good-conduct pay or pension and any other pecuniary reward;

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(13) 'enemy' includes all armed mutineers, armed rebels, armed rioters and pirates :

(14) 'active service,' as applied to a person subject to these Articles, means the time during which such person is attached to or forms part of a force which is engaged in operations against an enemy, or is engaged in military operations in a country or place wholly or partly occupied by an enemy, or is in military occupation of any foreign country :

(15) the expression 'India' means British India together with any territories of any Prince or Chief under the suzerainty of Her Majesty exercised through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council : and the expression 'British India' means all territories and places within Her Majesty's dominions which are for the time being governed by Her Majesty through the Governor General in Council or through any Governor in Council or other officer subordinate to the Governor General in Council :

(16) the expression 'general officer of the Command' means the general officer commanding the forces in a Command : and the expression 'Command' means one of the principal portions into which the army of India is, for the time being, divided :

(17) 'commanding officer,' used in any provision of these Articles with reference to any separate portion of Her Majesty's forces or to any department, means the officer whose duty it is under the Army Regulations, India, or, in the absence of any such Regulation, by the custom of the service, to discharge with respect to that portion of the forces or that department the functions of commanding officer in regard to matters of the description referred to in that provision :

(18) 'military custody' means the arrest or confinement of a person, according to the usages of the service :

(19) 'court-martial' means a court-martial held under these Articles :

(20) 'criminal court' means a court of ordinary criminal justice in British India, or established or continued elsewhere by the authority of the Governor General in Council :

(21) 'civil offence,' means an offence which if committed in British India would be triable by a criminal court : and

(22) expressions occurring in the Indian Penal Code and used in these Articles shall have the meanings respectively assigned to them by that Code."

Substitution of new clause for clause (f) of Part I.

5. For Part I, clause (f), of the said Articles the following shall be substituted, namely :

"(f).—Saving of certain Regulations.

"Nothing in these Articles shall affect any regulations by which the respective offices and powers of cantonment magistrates and officers in charge of the police in cantonments are defined and controlled."

6. For Part II, Title I, of the said Articles Substitution of new title for Title I of Part II. the following shall be substituted, namely :

"TITLE I.—ENROLMENT, ATTESTATION, DISMISSAL AND DISCHARGE.

"Article I.—(1) The Governor General in Enrolment and attestation, Council may, by notification, declare what persons or classes of persons shall be enrolled only, or be both enrolled and attested, respectively.

(2) A person shall be deemed to be enrolled under these Articles when Mode of enrolment. his name has, with his consent, been entered in the prescribed manner on the list of a corps or department of Her Majesty's Indian Forces.

(3) Subject to the provisions of this article with respect to recruits, every Mode of attestation. person to be attested under these Articles shall be taken before the prescribed civil or military officer, and that officer shall read and explain to him, or cause to be read and explained to him in his presence, the questions set forth in the prescribed form of attestation, and such other matters (if any) as may be prescribed ; and, after having cautioned him that if he makes a false answer to any question set forth in the attestation form he will be liable to be punished as provided by these Articles, shall record the answer to each question, and shall, if he is satisfied that the person fully understands the questions, and that the answer has been correctly recorded opposite each question, and if he perceives no impediment, administer to the person an affirmation or oath in the prescribed form.

(4) The form of affirmation or oath prescribed under this article shall contain a promise that the person to be attested will be faithful to Her Majesty, Her heirs and successors, and that he will serve in Her Majesty's Indian Forces and go wherever he is ordered by land or sea, and that he will obey all commands of any officer set over him, even to the peril of his life.

(5) When a recruit is reported fit for duty, an affirmation or oath in the same form shall be administered to him in the prescribed manner by the commanding officer in front of the corps or such portion thereof or such members of the department as shall be present.

(6) After administering the affirmation or oath, the officer shall authenticate the attestation paper by his signature, and the person shall then be deemed to have been attested.

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(7) Subject to any rules which may be prescribed, the Commander-in-Chief in India, or the general officer of the Command, may direct that any persons to whom these Articles apply as attested persons shall, for the purposes of these Articles, be deemed to be enrolled, and that any persons to whom these Articles apply as enrolled persons shall, for the purposes of these Articles, be deemed to be attested.

44 & 45 Vict., c. 58. "Article 2.—(1) Subject to the provisions of Rank and subordina- the Army Act, the Govern- tion. or General in Council may, by notification, direct that persons of any class subject to these Articles shall, for any of the purposes of these Articles, be deemed to be Native officers, warrant officers or non-commissioned officers; and,

(2) Subject as aforesaid, any prescribed authority may issue an order giving a like direction with respect to any such person.

(3) Any notification or order issued under this article may be cancelled by the authority issuing the same; and,

(4) Subject as aforesaid, any person of the said classes with respect to whom no such notification or order is in force shall, so far as may be, be deemed for all the purposes of these Articles to be of a rank inferior to that of a non-commissioned officer.

(5) Should any question arise as to the rank of any other person subject to these Articles, or as to whether any such person is above or below a specified rank, the decision of the Governor General in Council thereon shall be conclusive.

(6) Every person subject to these Articles shall, for the purposes thereof, be deemed to be under the commanding officer of the corps or department (if any) to which he is attached, and, if not attached to any corps or department, under any officer who may for the time being be named as his commanding officer by the general or other officer commanding the force with which such person may for the time being be serving, or of any other prescribed officer, or, if no such officer is named or prescribed, under the said general or other officer commanding;

Provided that a general or other officer commanding shall not place any person under an officer of official rank inferior to his own if there is present at the place where such person is any officer of higher rank under whom he can be placed.

"Article 3.—(1) Every commissioned officer shall be liable to dismissal from the service by the sentence of a general court-martial, and to dismissal or discharge by order of the Governor General of India in Council, of the Commander-in-Chief in India, or of the general officer of the Command to which he belongs.

(2) A commissioned officer dismissed under these articles shall forfeit all claim to pension.

"Article 4.—(1) Every person subject to these Articles, other than a commissioned officer, shall be liable to—
Dismissal and discharge of other persons.

(a) dismissal from the service by the sentence of any court-martial empowered to try him, and

(b) dismissal or discharge from the service, by order of the Governor General of India in Council, or of the Commander-in-Chief in India, or of the general officer of the Command to which he belongs, or of the general officer commanding the division or district in which he is serving, or, if he belongs to a force not attached to a command, by order of the officer commanding such force.

(2) Every person so dismissed shall forfeit all claim to pension.

"Article 5.—(1) 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 corps or department with which he is serving; and

(2) Every attested person of or below the rank of non-commissioned officer who is discovered to have made a wilfully false answer to any question set forth in the attestation paper which has been put to him by, or by direction of, the officer before whom he appears for the purpose of being attested, shall, on conviction by court-martial, be liable to suffer imprisonment (with hard labour and with or without solitary confinement) or such less punishment as is in these Articles mentioned.

"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."

7. In article 7, sentence 1, of the said Articles the words "in any regiment, corps, detachment or guard" are hereby repealed.

8. For the third sentence of the last-mentioned article the following shall be substituted, namely:

Substitution of new sentence for third sentence of same article.

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"or who, knowing or having reason to believe in the existence of any mutiny or sedition, or of any intention to mutiny or create sedition, or of any conspiracy against the state".

9. In article 8 of the said Articles, for the words "under any circumstances in which the superior officer is distinguishable as such in any manner" the words "knowing or having reason to believe him to be such" shall be substituted.

10. For articles 10 and 11 of the said Articles the following shall be substituted, namely :

"Desertion.

"Article 10.—Who deserts or attempts to desert the service ;—or

"Re-enlistment without having been discharged.

"Article 11.—Who, without having first obtained a regular discharge from the corps or department to which he belongs, enlists or enrolls himself in any other corps or department ;—or"

11. For the last paragraph of article 24 of the said Articles the following shall be substituted, namely :

"Whenever any person is convicted of an offence specified in article 7 and punishable with death under this article, all his property, moveable and immovable, shall be forfeited to the Government."

12. For articles 25 and 26 of the said Articles the following shall be substituted, namely :

"Unbecoming behaviour.

"Article 25.—Any officer, medical subordinate or warrant officer who behaves in a manner unbecoming his position and character ;—and any person subject to these Articles—

"Intoxication on duty.

"Article 26.—Who is in a state of intoxication when on or after having been warned for any duty, or on parade, or on the line of march ;—or"

13. For article 31 of the said Articles the following shall be substituted, namely :

"Failure to rejoin.

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

14. For article 39 of the said Articles the following shall be substituted, namely :

"Impeding Provost-marshal.

"Article 39.—Who impedes a provost-marshal or an assistant provost-marshal, or any officer or non-commissioned officer or other person legally exercising authority under or on behalf of a provost-marshal, or, when called on, refuses to assist, in the execution of his duty, the provost-marshal, assistant provost-marshal, or any such officer, non-commissioned officer or other person ;—or"

15. In article 40 of the said Articles the words "enrolled or" shall be inserted between the word "person" and the word "attested".

16. For article 47 of the said Articles the following shall be substituted, namely ;—

"Making away with regimental necessaries.

"Article 47.—Who—

(a) designedly or through neglect kills, injures or loses his horse or ill-treats any animal used in the public service ;—or

(b) dishonestly or fraudulently removes, conceals or delivers to any person, or 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

(c) sells, pawns, destroys or defaces any medal or decoration granted to him by order of Her Majesty or of the Governor General of India in Council for service in the field or for general good conduct ;—or"

17. In article 48 of the said Articles, for the word "and" where it first occurs the word "or" shall be substituted.

18. For article 57 of the said Articles the following shall be substituted, namely :

"Punishment for offences mentioned in articles 54, 55 and 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 two years : and shall, if convicted by a district court-martial, be liable to any or all of the penalties which such court is competent to inflict."

19. In article 65 of the said Articles the word "other" shall be omitted.

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20. For article 66 of the said Articles the Substitution of new article for article 66. following shall be substituted, namely :

“ Penalties for offences specified in articles 58 to 65.”

*“ Article 66.—*Shall, on conviction by a general or district court-martial, be liable to any or all of the punishments, other than death or transportation, which the court-martial is competent to award.”

21. In article 69 of the said Articles, for the Amendment of article 69. words “ such punishments as ” the words “ any or all of the punishments, other than death or transportation, which ” shall be substituted.

22. For article 71 of the said Articles the Substitution of new article for article 71. following shall be substituted, namely :

“ Abetment.”

*Article 71.—*Every person who abets, within the meaning of the Indian Penal Code, any offence punishable under these Articles may be punished with the punishment hereinbefore provided in these Articles for such offence.”

23. For articles 72 to 74 of the said articles Substitution of new articles for articles 72 to 74. the following shall be substituted, namely :

*“ Article 72.—*For the purposes of these Articles, there shall be five Courts-martial and the kinds thereof. kinds of courts-martial that is to say—

- | | | |
|-------------------------------------|---|---|
| (1) General courts-martial. | } | Hereinafter called ordinary courts-martial. |
| (2) District courts-martial. | | |
| (3) Regimental courts-martial. | | |
| (4) Summary general courts-martial. | } | Hereinafter called extra ordinary courts-martial. |
| (5) Summary courts-martial. | | |

“ Ordinary Courts-martial.”

“ Article 73.—(1) The following authorities shall have power to convene general or district courts-martial, namely :

- (a) the Commander-in-Chief in India,
 (b) the general officer of the Command,
 (c) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command.

(2) The power of convening general or district courts-martial may be granted under clause (1), sub-clause (c), subject to such restrictions, reservations, exceptions and conditions, as the Commander-in-Chief in India or the general officer of the Command granting the power may think fit.

(3) Any warrant under this article for convening general or district courts-martial, or either of them, may be addressed to an officer by name, or by designation of his office, or partly in one way and partly in the other, and may or may not,

according to the terms thereof and the mode in which it is addressed, be limited to an officer named or be extended to any person for the time being performing the duties of such officer, or to the successors in command of such officer.

*“ Article 74.—*A general court-martial shall, if held in British India, consist of not less than seven officers unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than five officers.”

24. Articles 75, 77, 78 and 79 of the said Repeal of articles 75, 77, 78 and 79. Articles are hereby repealed.

25. In article 76 of the said Articles, for the Amendment of article 76. words “ reduction to the ranks ” the words “ reduction to a lower grade or to the ranks ” shall be substituted.

26. For articles 80 and 81 of the said Articles Substitution of new articles for articles 80 and 81. the following shall be substituted, namely :

*“ Article 80.—*A district court-martial shall consist of not less than five officers, unless that number, due regard being had to the public service, is not available, in which case the court may consist of not less than three officers.

*“ Article 81.—*A district court-martial may, when necessary, be composed wholly of officers of the corps or department to which the accused belongs.”

27. In article 82 of the said Articles the Amendment of article 82. words “ or garrison ” and the words “ other than mutiny ” shall be omitted.

28. In the last-mentioned article, for the Further amendment of same article. words “ one year ” the words “ two years ” and for the words “ reduction to the ranks ” the words “ reduction to a lower grade or to the ranks ” shall be respectively substituted.

29. After article 82 of the said Articles the following article shall be inserted, namely :

*“ Article 82A.—*Whenever a general or district court-martial is ordered to be composed of the smaller number of officers specified in article 74 or 80, the order convening the court shall expressly state that the larger number of officers is not, due regard being had to the public service, available ; and that statement shall be conclusive evidence of the fact so stated.”

30. For articles 84 and 85 of the said Articles Substitution of new articles for articles 84 and 85. the following shall be substituted, namely :

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Composition of regimental court-martial. "Article 84.—A regimental court-martial shall consist of not less than three officers.

"Article 85.—A regimental court-martial shall have power to try all persons subject to these Articles and not above the rank of non-commissioned officer—

- (a) for any offence triable by a court-martial under these Articles, except an offence punishable, under articles 7 to 23 (both inclusive), articles 59 to 65 (both inclusive), or articles 171 to 173 (both inclusive), and
- (b) with the previous sanction of the prescribed authority, for any of the offences so excepted.

"Article 85A.—A regimental court-martial shall have power to pass any sentence which might have been passed by a district court-martial for the like offence other than suspension from rank, pay and allowances:

Provided that no sentence of imprisonment for a term exceeding six months, nor any of the additional punishments specified in article 135, shall be passed by a regimental court-martial."

31. For articles 86 to 89 of the said Articles the following shall be substituted, namely:

"Article 86.—(1) The officers composing a Native and British court-martial convened when to be under the foregoing provisions shall, except as hereinafter provided, be Native officers.

(2) The Governor General in Council, or the Commander-in-Chief in India, or the general officer of the Command, or any officer authorized by the Governor General in Council, or by the Commander-in-Chief in India or the general officer of the Command, may direct that any court-martial convened under these Articles shall be composed of British instead of Native officers.

(3) Any person subject to these Articles, who is under orders for trial by any court-martial, may claim to be tried by British officers.

(4) In all cases the right of making such a claim shall, before the court is convened, be explained to the person under orders for trial by the commanding officer, or some officer deputed by him in this behalf, and, when such a claim is made, the court shall be constituted accordingly.

(5) A court-martial convened for the trial of any person subject to these Articles, and serving with any British corps or detachment, may be composed of British officers if, in the opinion of the officer convening the court (such opinion to be expressed in the order convening the court and to be conclusive), Native officers are not available with due regard to the public service for service on the court.

Judge advocate and appointment of superintending officer for Native court-martial. "Article 87.—(1) Every general court-martial shall be attended by a judge advocate.

(2) If no officer of the judge advocate general's department is available, the officer convening the court shall appoint a fit person to act as judge advocate at the trial.

(3) No person under orders for trial or under trial by any court-martial may, without the leave of the court, object to any person acting or professing to act as judge advocate.

(4) A British officer of not less than four years' service, hereinafter called the superintending officer, shall be appointed to superintend the proceedings of every court-martial composed of Native officers which is not attended by a judge advocate.

"Article 88.—(1) At every court-martial the President. senior officer shall sit as president without special appointment as such.

(2) In case of the death or unavoidable absence of the president, the next senior officer shall take the place of the president, without special appointment as such, and the trial shall proceed if the court is still composed of not less than the smallest number of officers of which it is required by these Articles to consist.

"Article 89.—No finding or sentence of a general, district or regimental court-martial shall be valid, except so far as it may be confirmed as provided by these Articles.

"Article 89A.—(1) The following authorities shall have power to confirm the findings and sentences of general and district courts-martial:

- (a) the Commander-in-Chief in India;
- (b) the general officer of the Command, as regards troops under his command wherever stationed;
- (c) the officer commanding a force not attached to a Command;
- (d) any officer empowered in that behalf by warrant of the Commander-in-Chief in India or the general officer of the Command:

Provided that, except on active service or beyond the limits of India, no warrant issued under this article shall be deemed to empower an officer to confirm any finding or sentence in the case of an officer, medical subordinate or warrant officer, or a sentence of death, transportation or imprisonment for a term exceeding seven years, in any case whatever.

(2) The provisions of article 73, clauses (2) and (3), shall, with the necessary modifications, apply to warrants issued under this article.

(3) The officer who convenes a regimental court-martial or the officer having authority to

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convene such court-martial, at the date of the submission of the finding and sentence thereof, shall have power to confirm the same.

Article 89 B.—Subject to such restrictions as may be contained in any warrant issued under the last preceding article, the confirming officer may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any less punishment or punishments to which the offender might have been sentenced by the court-martial :

Provided that a sentence of transportation shall not be commuted to a sentence of imprisonment for a term exceeding the term of transportation awarded by the court."

32. For articles 90 to 97 of the said Articles the following shall be substituted, namely :

"Extraordinary Courts-Martial.

Article 90.—The following authorities shall have power to convene a summary general court-martial, and such a court-martial may be convened —

(a) in any place, whether within or beyond British India, by an officer empowered in this behalf by an order of the Governor General in Council or of the Commander-in-Chief in India or of the general officer of the Command;

(b) by an officer commanding any detached portion of Her Majesty's troops upon active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary general court-martial.

Article 91.—(1) A summary general court-martial shall consist of not less than three officers, who may be either British or Native, or both British and Native officers, as the officer convening the court thinks fit.

(2) Such court may be convened and the proceedings thereof be recorded in accordance with the form in the appendix to these Articles :

Provided that the convening officer may, in respect of any such trial by such court, specially order the evidence, together with the prisoner's statement in defence, to be fully recorded in writing.

Article 92.—A summary general court-martial shall have all the powers of a general court-martial, and, subject to any instructions contained in the order convening the court, its sentence shall be valid, and may be carried out forthwith if it does not exceed that

which a district court-martial is empowered to pass, and in any other case when confirmed by the authority convening the court.

Article 93.—(1) A summary court-martial may be held—

(a) by the commanding officer, being a combatant officer, of any corps or department of Her Majesty's Indian forces, or of any detachment of those forces;

(b) by the commanding officer of any British corps or detachment to which Native combatant details subject to these Articles are attached.

(2) At every summary court-martial the officer holding the trial shall alone constitute the court, but the proceedings shall be attended throughout by two other officers, British or Native, who shall not, as such, be affirmed or sworn.

(3) The proceedings shall be recorded in the English language, and, when closed, shall be signed by the officer holding the trial, and by the officers attending thereat.

(4) A summary court-martial may try any person subject to these Articles and under the command of the officer holding the court, except an officer, medical subordinate or warrant officer.

(5) Any member of an army hospital corps may be tried by summary court-martial by any officer authorised in this behalf by the officer commanding the division, district, brigade or station to which the alleged offender belongs.

Article 94.—A summary court-martial may try any offence punishable under any of these Articles :

Provided that when there is no grave reason for immediate action, and reference can, without detriment to discipline, be made to superior authority, a summary court-martial shall not try without such reference any of the following offences, namely :

(a) any offence punishable under any of the articles 7 to 23, both inclusive, or articles 50 to 65, both inclusive, or article 171 ;

(b) any offence against the officer holding the court.

Article 95.—(1) A summary court-martial held by the commanding officer of a corps or department may pass any sentence which can be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding one year.

(2) A summary court-martial held by any other officer may pass any sentence which can

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be passed under these Articles, except a sentence of death or transportation, or of imprisonment for a term exceeding six months.

"Article 96.—The finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out at once :

Provided that, if the officer holding the trial is of less than five years' service, he shall not, except on active service, carry into effect any sentence until it has received the approval of a superior military officer commanding not less than a corps.

"Article 97.—The proceedings of every summary court-martial shall, without delay, be forwarded to the officer commanding the district, or the division or brigade, within which the trial was held, or to the prescribed officer : and such officer or the Commander-in-Chief in India or the general officer of the Command, or, when the court is held in a force not attached to a Command, the officer commanding the force, may, for reasons based on the merits of the case, but not on any merely technical grounds, set aside the proceedings."

33. For article 100 of the said Articles the following shall be substituted, namely :

"Article 100.—(1) Whenever any person subject to these Articles is accused of any offence which his commanding or other superior officer considers should be tried by court-martial, such officer shall order the accused to be placed in military custody until he can be tried by a court-martial or is discharged by proper authority.

(2) No such person shall be detained in military custody longer than is necessary for the purposes of justice."

34. Article 101 of the said Articles is hereby repealed.

35. For article 102 of the said Articles the following shall be substituted, namely :

"Article 102.—(1) An interpreter shall be appointed to every court-martial.

(2) 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 district or place within or at which the trial is to be held, shall appoint any competent person to perform the duty of interpreter.

(3) 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.

(4) In the case of a trial by a summary court-martial, the officer holding the trial, or one of the officers in attendance thereat, may perform the duty of interpreter if no other competent interpreter is available.

(5) No interpreter shall, as such, have a vote upon any matter."

36. For article 103 of the said Articles the following shall be substituted, namely :

"Article 103.—(1) When a court-martial after the commencement of the trial is reduced below the smallest number of officers of which it is by these Articles required to consist, it shall be deemed to be dissolved.

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

(3) Where a court-martial is dissolved under this article, the prisoner may be tried again.

"Article 103A.—The president of a court-martial may, on any deliberation among the members, cause the court to be cleared of all other persons.

"Article 103B.—The court may, when it thinks fit, view any place."

37. In article 104 of the said Articles the words "general court-martial appointed under an Order in Council, or of any other" shall be omitted.

38. In article 107 of the said Articles, for the words "courts-martial, other than courts-martial appointed under an Order in Council, or summary" the word "ordinary" shall be substituted.

39. After article 108 of the said Articles the following article shall be inserted, namely :

"Article 108A.—At a summary court-martial the interpreter shall make affirmation or oath down to the words 'published by authority' only."

40. Article 114 of the said Articles is hereby repealed.

41. For article 116 of the said Articles the following shall be substituted, namely :

"Article 116.—(1) A prisoner charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A prisoner charged before a court-martial with attempting to desert may be found guilty of desertion or of being absent without leave.

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(3) A prisoner charged before a court-martial with any one of the following offences, that is to say, theft, dishonest misappropriation or conversion, criminal breach of trust, or dishonestly receiving or retaining stolen property, may be found guilty of any other of those offences.

(4) A prisoner charged before a court-martial with any other offence under these Articles may, on failure of proof of an offence having been committed under circumstances involving a more severe punishment, be found guilty of the same offence as having been committed under circumstances involving a less severe punishment."

42. For articles 117 of the said Articles the following shall be substituted, namely:

"Article 117.—(1) 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 criminal court, and shall further enquire into and record the general character of such person."

(2) Evidence received under this article may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to prove the signature to such certified extracts, nor shall it be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the commanding officer holding the trial may, if he thinks fit, record any previous convictions against the offender and his general character, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this article.

"Article 117A.—Subject to the provisions of the last foregoing article, the Indian Evidence Act, 1872, subject to such modifications thereof and to such additional rules of evidence as the Governor General in Council may, by notification, direct, shall apply to all proceedings before a court-martial."

43. For articles 119 and 120 of the said Articles the following shall be substituted, namely:

"Article 119.—No sentence of death shall be passed by any court-martial without the concurrence of two-thirds at the least of the members of the court."

"Article 120.—(1) The finding or sentence of any court-martial may be once revised by order of the officer authorized to dispose of the proceedings, and, on such revision, the court, if so directed by him, may take additional evidence."

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers shall be unavoidably absent.

(3) 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."

44. For articles 122 to 124 of the said Articles the following shall be substituted, namely:

"Article 122.—(1) The judge advocate in the case of a general court-martial, and the officer summoning witnesses and production of documents, during 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 any document or other thing."

(2) In the case of a witness amenable to military authority, the summons shall be sent to the officer actually commanding the corps, department or detachment to which he belongs, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

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

(5) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to any letter, post-card, telegram or other document in the custody of the postal or telegraph authorities.

(6) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, high court or court of session, wanted for the purposes of any court-martial, such magistrate or court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or court may direct.

(7) If any such document is in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph department, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or court."

"Article 123.—(1) Any witness duly summoned, and any person who commits any contempt of court in the presence of a court-martial, or any offence described in article 64, 75, or 76, shall, if

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subject to these Articles, be proceeded against as the court may direct.

(2) If any such witness or person is not so subject, the president of the court-martial may certify the offence under his hand to the court of any magistrate within the local limits of whose jurisdiction it was committed, and the magistrate may thereupon take cognizance of the case, and, after hearing anything which the accused may desire to say, dispose of it as if the offence had been committed in a proceeding in the court of such magistrate.

Article 124.—(1). No president or member of a court-martial, no judge advocate or superintending officer, no party to any proceeding before a court-martial or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial, shall, while proceeding to, attending on or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial."

Repeal of articles 125 to 129. **45.** Articles 125 to 129 of the said Articles are hereby repealed.

46. In article 130, clause (d), sentence 1, of the said Articles, for the words "one year" the words "two years" shall be substituted.

47. For article 131 of the said Articles the following shall be substituted, namely:

Article 131.—Dismissal from the service may accompany any other sentence passed by a court-martial."

48. In article 132 of the said Articles, after the word "reduced" the words "to a lower grade or" shall be inserted.

49. For Articles 133 to 137 of the said articles the following shall be substituted, namely:

Article 133.—In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Article 134.—A non-commissioned officer sentenced by court-martial to any of the punishments specified in the

second paragraph of article 132 shall be deemed to be reduced to the ranks.

Article 135.—On a conviction, of any offence, a general, summary general or district 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 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, or to forfeit service for the purpose of promotion, increased pay or pension or any other prescribed purpose, or to forfeit any military decoration or reward.

Article 136.—Whenever a person subject to these Articles is convicted by a court-martial, his good-conduct pay shall, subject to any rules or orders which may from time to time be made with the previous sanction of the Governor General in Council, cease.

Article 137.—On a conviction for any offence, if the offender is sentenced to dismissal from the service, or if his sentence involves such dismissal, he shall further be sentenced to forfeit, as the court may direct,—

(a) all or any arrears of pay and allowances or other public money due to him at the time of his dismissal, or

(b) such portion thereof as may be required to make good any proved loss or damage arising out of his offence."

50. The first paragraph of article 138 of the said Articles, and the word "and" at the beginning of the second paragraph of the same article, are hereby repealed.

51. In article 139 of the said Articles, for the words "in the case of an officer, two-thirds, or, in the case of any other person, one-half of his" the words "one-half of the offender's" shall be substituted.

Repeal of articles 142 to 150. **52.** Articles 142 to 150 of the said Articles are hereby repealed.

53. In article 151 of the said Articles, for the words "the nearest jail" the words "a jail" shall be substituted.

54. To the last-named article the following proviso shall be added, namely:

"Provided that, in the case of a sentence of such imprisonment for a period not exceeding three months, the confirming or superior authority or, in the case of a summary court-martial the commanding officer holding the trial may direct that the sentence shall be undergone in military custody."

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55. To article 152 of the said Articles the words "Subject to the control of the Commander-in-Chief in India" shall be prefixed; and for the words "the Commander-in-Chief of a Presidency" the following words shall be substituted, namely: "the general officer of the Command."

56. To the second paragraph of the last-mentioned article the words "Subject as aforesaid," shall be prefixed.

57. In article 155 of the said Articles, after the words "from the date of such sentence" the words "or, if an appeal be preferred against such sentence and fail, from the date of the disposal of such appeal," shall be inserted.

58. To the last-mentioned article the following shall be added, namely:

"Provided that on active service any such person may, by order of the officer empowered, under these Articles to confirm or otherwise dispose of the proceedings of the trial, be retained to serve in the ranks, and his service therein shall be reckoned as part of his term of transportation or imprisonment."

59. Articles 156 to 159 of the said Articles are hereby repealed.

60. For article 160 of the said Articles the following shall be substituted, namely:

"Article 160.—When any person subject to these Articles has been convicted by a court-martial of any offence,—

- (a) the Governor General in Council, or,
- (b) when the person has been convicted of any offence other than a civil offence, the Commander-in-Chief in India, or the general officer of the Command,

may—

- (1) pardon the person;
- (2) remit wholly or in part any punishment awarded to him;
- (3) order the restoration to him of any service or other advantage forfeited under his sentence, or
- (4) re-admit him to the service when he has been dismissed therefrom:

Provided that the general officer of the Command shall not exercise the powers conferred by this section in respect of any person, unless—

- (1) the person was under his authority when sentenced; and

(2) the person is still in the service, or, if the person has been dismissed from the service, the corps or department from which he was dismissed has since continued under the authority of that officer."

61. In article 161 of the said Articles the words "or to the Government of Fort St. George. or to the Government of Bombay," shall be repealed; and for the words "Commander-in-Chief of any Presidency or of the officer commanding any force not attached to a Presidency" the following words shall be substituted, namely: "Commander-in-Chief in India or the general officer of the Command, or of the officer commanding any force not attached to a Command."

62. After article 161 of the said Articles the following shall be inserted, namely:

"Preservation of Proceedings.

"Article 161 A.—(1) The proceedings of all general courts-martial shall be preserved by the judge advocate general for not less than seven years, and the proceedings of summary general courts-martial and district courts-martial for not less than three years, from the date of the confirmation of the finding and sentence.

(2) The proceedings of regimental and summary courts-martial shall be preserved for three years with the records of the corps or department to which the prisoner belonged.

(3) Every person tried by a court-martial shall be entitled, on demand at any time after the confirmation of the finding and sentence where such confirmation is required, and before the proceedings are destroyed, to obtain from the officer or person having the custody of the proceedings a copy thereof, including the proceedings upon revision, if any, upon payment for the same at the prescribed rate."

63. For article 162 of the said Articles the following shall be substituted, namely:

"Article 162.—(1) When any person subject to these Articles has been absent without due authority from his duty for a period of sixty days, a court of enquiry shall, as soon as practicable, be assembled, and, upon affirmation or oath administered in the prescribed manner, shall enquire respecting the absence of the person, and the deficiency, if any, of property of the Government entrusted to his care, or of his arms, ammunition, equipments, instruments, clothing or necessaries; and, if satisfied of the fact of such absence without due authority or other sufficient cause, the Court shall declare such absence and the period thereof, and the said deficiency, if any; and

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the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

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

(3). If the person declared absent surrenders or is apprehended, the record or a copy thereof, purporting to bear the signature of the officer having the custody of the court-martial book, shall, on the trial of the 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 and of the deficiency, if any, therein recorded."

64. For the last paragraph of article 163 of the said Articles the following shall be substituted, namely:

"Such recommendation, duly confirmed by the Commander-in-Chief in India, or by the general officer of the Command, or the officer commanding any force not attached to a Command to which he belongs, or by any general officer under whose command the person is serving, shall entitle him to receive such arrears and reckon service accordingly."

65. For article 164 of the said Articles the following shall be substituted, namely:

"Article 164.—The Commander-in-Chief in India, the general officer of the Command, the officer commanding any force not attached to a Command, and the officer commanding any district or division or brigade, shall respectively have power to reduce to a lower grade or to the ranks any non-commissioned officer under his command."

66. In article 165 of the said Articles the words "No such minor punishment shall be awarded by a court-martial, and," the words "or of the Commander-in-Chief of the Presidency, as the case may be," and the words "Whenever a soldier is convicted by a court-martial, his good-conduct pay shall cease" shall be omitted; and for the words "either by order of the commanding officer or by sentence of a court-martial" the words "by order of the commanding officer" shall be substituted.

67. In article 166 of the said Articles, the words "the Governor of Fort St. George in Council, the Governor of Bombay in Council, or any other Local Government" shall be omitted.

68. In article 168 of the said Articles for the words "the Commander-in-Chief of the Presidency" the words "the Commander-in-Chief in India or the general officer of the Command" shall be substituted.

69. In the second paragraph of article 169 of the said Articles, for the words "warrant officer" the words "non-commissioned officer" shall be substituted.

70. The second and third paragraphs of article 170 of the said Articles are hereby repealed.

71. For articles 171 to 175 of the said Articles the following shall be substituted, namely:

"Civil Offences.

"Article 171.—Every person subject to these Articles who at any place beyond British India commits any civil offence shall be deemed to be guilty of an offence against military law, and if charged therewith under this article shall, subject to the provisions of these Articles, be liable to be tried for the same by court-martial at any place, whether within or beyond British India, and on conviction to be punished as follows, that is to say:

(a) if the offence is one which would be punishable under the law of British India with death or with transportation, or with imprisonment for a term exceeding three years, he shall be liable to suffer any punishment assigned for the offence by the law of British India; and

(b) in other cases, he shall be liable to suffer any punishment assigned for the offence by the law of British India or such punishment as might be awarded to him in pursuance of these Articles in respect of an act to the prejudice of good order and military discipline.

"Article 172.—The Governor General in Council may, by notification, extend the last foregoing article to civil offences or any class of those offences committed by a person subject to these Articles when on active service in British India, and may cancel any such notification.

"Article 173.—Every person subject to these Articles who, whether within or beyond British India, commits or attempts to commit or abets the commission of any of the following offences against any person subject to military law, that is to say, murder, culpable homicide or any offence punishable under any of the sections 223 to 335 (both inclusive) or section 506 of the Indian Penal Code, shall be deemed to be guilty of an offence against military law, and if charged under this article with any such offence shall, subject to the provisions of these Articles, be liable to be tried by court-martial at any place whether within or without British India, and on conviction shall be liable to suffer any punishment assigned for the offence by the said Code.

"Article 174.—When under any of the foregoing Articles a criminal court and a court-martial have each jurisdiction in

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respect of an offence, it shall be in the discretion of the prescribed military authority to decide before which court the proceedings shall be instituted, and, if that authority decides that they shall be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

“*Article 175.*—(1) When a criminal court having jurisdiction is of opinion that proceedings ought to be instituted before itself in respect of any alleged offence, it may, by written notice, require the convening authority or the prescribed military authority at his option either to deliver over the offender to the nearest magistrate to be proceeded against according to law or to postpone proceedings pending a reference to the Governor General in Council.

(2) In every such case the said authority shall either deliver over the offender in compliance with the requisition or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Governor General in Council, whose order upon such reference shall be final.”

Substitution of new articles for articles 176 to 179.

72. For articles 176 to 179 of the said Articles the following shall be substituted, namely :

“TITLE VI.—PROPERTY OF DECEASED PERSONS AND DESERTERS.

“*Article 176.*—The following rules are enacted respecting the disposal of the property of every person who belongs to a class subject to these articles who dies, is killed in the field, or deserts :—

(1) The commanding officer shall secure all the moveable property that is on the spot, and cause an inventory thereof to be made, and draw any pay and allowances due to the deceased or deserter.

(2) In the case of a deceased person who has left in a Government Savings Bank (including any Post Office Savings Bank, however named) a deposit not exceeding one thousand rupees, the commanding officer may, if he thinks fit, require the secretary or other proper officer of the bank to pay the deposit to him forthwith notwithstanding anything in any departmental rules ; and, after the payment thereof in accordance with such requisition, no person shall have any right in respect of the deposit except as hereinafter provided.

(3) In the case of a deceased person whose representative is on the spot and has given security for the payment of the regimental debts (if any) of the deceased, the commanding officer shall deliver over the property and the amount of the deposit (if any) received under clause (2) of this article to that representative.

(4) In the case of a deceased person whose estate is not dealt with under clause (3) of this article, and in the case of any deserter, the

commanding officer shall cause the property to be sold by public auction, and shall pay the regimental debts and other debts in camp or quarters (if any), and in the case of a deceased person the expenses of his funeral ceremonies, from the proceeds of the sale and the amount of the deposit (if any) received under clause (2) of this article.

(5) The surplus, if any, shall in the case of a deceased person be paid to his representative, if any, or in the event of no claim to such surplus being established within twelve months after the death, then the same shall be remitted to the prescribed officer.

(6) In the case of the sale of the effects of a deserter, the amount remaining in the hands of the commanding officer shall be forthwith remitted to the prescribed officer.

“*Article 177.*—Property deliverable and money payable to the representative of a deceased person under the last foregoing article may, if the total value or amount thereof does not exceed one thousand rupees, and if the prescribed officer thinks fit, be delivered or paid to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, without requiring the production of any probate, letters of administration, certificate or other such conclusive evidence of title ; and such delivery or payment shall be a full discharge to those ordering or making the same and to the Secretary of State for India in Council from all further liability in respect of the property or money ; but nothing in this article shall affect the rights of any executor or administrator or other representative, or of any creditor, of a deceased person against any person to whom such delivery or payment has been made.

“*Article 178.*—A person shall be deemed to have deserted within the meaning of article 176 who has been convicted of desertion, or who has been illegally absent from duty for a period of sixty days and has not subsequently surrendered or been apprehended.

“*Article 179.*—The provisions of the last mentioned article shall, so far as they can be made applicable, apply in the case of a person subject to these Articles becoming insane, such allowance being made for his support as is authorised by the Military Lunatics Act, 1877.”

73. For Part III of the said Articles the following shall be substituted, namely :

“PART III.—MISCELLANEOUS.

“*Article 180.*—When any person subject to these Articles has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been summarily dealt with for an

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offence under article 165 or 166, he shall not be liable to be again tried for the same offence by a court-martial or dealt with summarily in respect of it under either of the said Articles.

Article 181.—(1) No person subject to these Articles shall, so long as he belongs to Her Majesty's Indian Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) 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 provisions of this article, and may by warrant under his hand discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no fee whatever shall be payable to the court by the complainant.

Article 182.—Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to these Articles, nor any animal used by him for the discharge of his duty, shall be seized; nor shall the pay and allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer, in satisfaction of any decree or order enforceable against him.

Article 183.—Every person belonging to the Indian Reserve Forces shall, as an officer or soldier, be entitled to all the privileges accorded by the two last foregoing articles to a person subject to these Articles.

Article 184.—(1) On the presentation to any court by or on behalf of any officer or soldier subject to these Articles of a certificate, from the proper military authority, of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court, the court shall, on the application of such officer or soldier, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority must state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee whatever shall be payable to the court in respect of the presentation of any such certificate, or in respect of any application by or on behalf of any such officer or soldier for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for having been unable to do so, and shall cause a copy thereof to be furnished to such officer or soldier on his application, without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall be at once referred by the court to the nearest officer commanding a corps, whose decision shall be final.

Article 185.—(1) Whenever any person subject to these Articles deserts, the commanding officer of the corps, department 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.

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

(3) Any police-officer may arrest, without warrant, any person reasonably believed to be travelling without authority, 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.

Article 186.—Whenever any person subject to these 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.

Article 187.—In any proceeding under these Articles, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the civil or military service of the 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.

Article 188.—(1) The Governor General in Council may direct that Portions of the forces under an Army Command. for the purposes of these Articles—

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(a) any portion of Her Majesty's Indian Forces belonging to a Command shall, when serving beyond the ordinary limits of the Command, continue subject to the authority of the general officer of the Command; or

(b) any portion of those forces not belonging to a Command shall be attached to a Command, and shall be subject to the authority of the general officer of the Command.

(2) Except as may be directed under clause (1) of this article, any portion of the said forces shall, when serving in a Command, be for the purposes of these Articles subject to the authority of the general officer of that Command.

“Article 189.—Nothing in these Articles shall be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or Commission.

“Article 190—(1) The Governor General in Council may, by notification, make rules consistent with these Articles to regulate the procedure of courts-martial and officers, military, civil or political, having any jurisdiction or authority under these Articles, and for the purpose of carrying these Articles into execution, so far as relates to the investigation, trial and punishment of offences triable under them.

(2) Rules under this article may provide among other matters for the following:

- (a) the assembly and procedure of courts of enquiry;
- (b) the convening and constituting of courts-martial;
- (c) the adjournment, dissolution and sittings of courts-martial;
- (d) the procedure to be observed in trials by courts-martial;
- (e) the confirmation and revision of the findings and sentences of courts-martial;
- (f) the carrying into effect sentences of courts-martial;

(g) the forms of orders to be made under the provisions of these Articles relating to courts-martial, transportation or imprisonment.

(3). The Governor General in Council may by any such rule confer on any court-martial or officer any power (other than a power to try an accused person or pass a sentence) conferred on a court of original jurisdiction by the Code of Criminal Procedure, 1882.”

X of 1882.

WHEREAS it is provided by section 177 of the Army Act that where any force is raised in India, any law in India may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India;

And whereas doubts exist whether certain forces which have been raised and are maintained in India under the authority of the Governor General in Council are or are not parts of Her Majesty's Indian Forces subject to the said Articles, and it is expedient to provide for the discipline and regulation of such forces;

It is hereby enacted as follows:

74. (1) The Governor General in Council may, by notification, apply all or any of the provisions of the said Articles as amended by this Act to any such force, and may cancel or modify any such notification.

(2) While any of the provisions of such Articles apply to any such force, the Governor General in Council may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of those provisions shall be exercised or performed in respect to that force.

APPENDIX.

FORM FOR RECORD OF PROCEEDINGS OF SUMMARY GENERAL COURT-MARTIAL.

(See Manual of Military Law.)

STATEMENT OF OBJECTS AND REASONS.

ACT V of 1869, known as the Indian Articles of War, has long been felt to require amendment and re-casting, as much for the many defects and redundancies contained therein as for its faulty arrangement.

In 1887, the Indian Army Bill was drafted on the basis of the Army Act with the view to extending to the Native Army, as far as the difference of circumstances would permit, the improvements in military law introduced into the British Army by the Army Act and the preceding Discipline Act; but, as that Bill did not meet with the approval of the Secretary of State, a Bill for the amendment of Act V of 1869 was ordered, and is now submitted, dealing only with the more glaring defects of the Articles of War, following very greatly the proposals of the Indian Army Bill, 1887.

A further reason for the amendment of the Act arises from the passing by Parliament of the Madras and Bombay Armies Act, abolishing, from a date to be determined by the Governor General in Council, the Presidential system.

It has been deemed expedient to confer on the General Officers Commanding the Forces in the four Commands into which the Army of India is to be divided under the new system all the powers now held by the Commanders-in-Chief of Madras and Bombay.

The powers now held by the Governors of Madras and Bombay have been entirely rescinded.

In explaining some of the more important of the proposed amendments the order of the sections will, as far as possible, be adhered to.

1. *Section 3* specifies the different classes of persons subject to military law. It will be observed that persons who are not gazetted, attested or enrolled, and who are included merely on the ground of their being servants or followers, are subject to the law only when on active service, in camp, on the march, or at a frontier post at which the Governor General in Council may direct that they shall be so subject.

It follows that all persons attached to the Native Army, whom it is desired to subject to military law in cantonments, must be either attested or enrolled, and it is left to executive action to determine what classes of persons shall be enrolled and what classes attested.

2. *Section 6* provides that the Governor General in Council may declare what persons are to be enrolled only or be both enrolled and attested. It is apprehended that the distinction between attestation and enrolment has not been always attended to, and that persons may thus have been attested who ought to have been enrolled, and *vice versa*; and, as the amendment makes certain substantial distinctions between attested and enrolled persons, it has been thought well to empower the Commander-in-Chief in India, and General Officers Commanding the Forces in the four Commands, subject to any rules which may be prescribed by the Governor General in Council, to direct that any persons who have been attested under the old law shall be deemed to be enrolled under the new law, and *vice versa*.

Sub-section (3) provides that, except in the case of a recruit, who will be attested when reported fit for duty, the form of attestation should be gone through as soon as possible upon enlistment or enrolment before a civil or military officer; and it should be stated that the intention is that the officer should ordinarily be an officer invested with magisterial powers.

3. In connection with this amendment a question of some importance presents itself as to the mode of dealing with classes of Natives serving with British corps.

The persons in question may, in some cases, be mere servants, as, for example, the grass-cutters attached to a British cavalry regiment; but in other cases, like that of the mahouts attached to a British heavy battery, they may be said to constitute an integral part of the corps.

The necessity of subjecting some persons of those classes to military law appears to be recognized; and it seems clear and is further in accordance with the general intention shown in the Mutiny Acts and in the Army Act, and by the recent action of the Government of India in bringing native drivers of British mountain batteries and the men of the Transport Corps under the Indian Articles of War, that they should, if subject to military law, be subject to that form of it provided for the Native Army.

The Army Act, in so far as it applies Indian military law to any persons of these classes, applies it only to them in certain cases where they are on active service—see section 176 (10); and it is understood that the usual practice has been to enrol them or attest them in some manner under the Indian Articles and then treat them as persons who, though their services are placed at the disposal of the British corps, belong to the Native Army and are subject to the Indian Articles. The amendment will admit of this practice being continued, but with a slight additional formality, in the case of persons who are merely enrolled and not attested. In the case of these persons it would be impracticable to prescribe any more elaborate process for subjecting them to military law than the mere entry of their names on a list with their consent. This being so, the list on which they are entered ought to become specially appropriated to this purpose. If, for example, they were merely entered on the pay list of a British corps which might contain the names of other classes of Native servants whom it is not proposed to subject to military law, there would be nothing to distinguish their position from that of those other servants, and, as has occasionally happened, a doubt might arise on the important point as to whether they were or were not subject to military law. To prevent this the amendment provides that the name of a person to be enrolled must be entered on the list of some corps or department of Her Majesty's Indian Forces. Special lists will therefore have to be kept in such British corps in which Natives attached to the corps, and whom it is desired to subject to Indian military law, will be entered as belonging to some sort of servants, corps or department of Her Majesty's Indian Forces. This, it is believed, will not give much trouble, and it will put an end to the difficulties which now from time to time arise regarding the position of these persons.

Article 2 (1), (2), (3) and (4) empower certain authorities to confer upon servants and followers subject to military law a status higher than that of a soldier for the purposes of any provision of the law, and has been suggested by section 175 (8) of the Army Act; but, having regard to the great diversities of position among the numerous persons who accompany an army in this country in connection with the furnishing of supplies, for the performance of clerical work, as private traders, and otherwise, it has been thought well to give a wider discretion and to allow not merely the status of an officer but also that of a warrant officer or non-commissioned officer to be thus conferred.

5. *Article 2 (5)* empowers the Governor General in Council to determine in cases of doubt any question as to the rank of any person, or as to whether he is above or below a specified rank, and has been introduced with reference to those Articles which apply, *e.g.*, to persons "below the rank of warrant officer" or "below the rank of non-commissioned officer." It is believed that, as a rule, there will be no difficulty

in determining the rank of a person subject to the Articles of War; but, as in the case of some enrolled persons a doubt might arise, it has been deemed advisable to provide for its removal.

6. *Articles 3 and 4.*—Under the existing law, the discharge, as distinguished from the dismissal, of a commissioned officer or other person has been practically impossible. Dismissal carries with it forfeiture of all claim to pension. This has not unfrequently been found to be inconvenient. It may often be desirable to discharge a commissioned officer or soldier under conditions which do not call for a forfeiture of pension earned.

The proposed amendment will effect this end without injustice to the discharged person.

The further amendment in article 4, giving power to General Officers Commanding divisions or districts to dismiss or discharge, is thought to be very desirable. This power is exercised by the General Officers Commanding the Punjab Frontier Force and the Hyderabad Contingent under the existing law, and has worked well.

Courts-martial.

7. An effort, which necessarily leads to the repealing of a large number of the existing Articles, has been made to effect a considerable simplification. At present there are no less than ten different kinds of Courts-martial. The formal list in article 72 mentions only eight, but the headings "General Courts-martial" and "District Courts-martial" in that list each comprise two sub-divisions, General and District Courts-martial being practically different Courts when they are convened under the authority of an Order in Council from what they are when otherwise convened.

The amendment provides for only five descriptions of Courts-martial, namely :

General Courts-martial,
District Courts-martial, and
Regimental Courts-martial, } which are called ordinary Courts-martial.
and

Summary General Courts-martial, and } which are called extraordinary Courts-martial.
Summary Courts-martial,

8. The General Court-martial corresponds to the General Court-martial of the Army Act and the present Articles, and will consist of seven officers instead of nine; but, if the full complement of seven officers is not available, it may consist of any number not less than five.

The District Court-martial corresponds to the District and Garrison Courts-martial of the present Articles, but differs therefrom in the following particulars, that it is to consist of not less than five officers instead of seven, but, if so many as five are not available, it may consist of any number not less than three: that it is competent to try any offence under the Articles, and its power of awarding imprisonment is extended from one to two years. It will be observed that, as to this last particular, its powers have been put on the same footing as those of a District Court-martial under the Army Act.

The Regimental Court-martial corresponds to the Regimental Court-martial, Regimental Detachment Court-martial and Detachment Court-martial of the present Articles. Its powers remain the same, but it is to consist of three—instead of five—officers.

It is debarred from trying a considerable number of the more serious military offences and any civil offence without the permission of superior authority. It can try any person subject to the Articles and not above the rank of non-commissioned officer who is under the command of the convening officer.

9. *Article 89.*—Every finding and sentence of an ordinary Court-martial requires confirmation and will be valid only in so far as it is confirmed. This is in substantial accordance with the existing law, but an important change is proposed in article 89A, sub-section (1), which, except on active service or beyond the limits of India, makes sentences of death, transportation or imprisonment for a term exceeding seven years confirmable only by the Commander-in-Chief in India, the General Officer of a Command or an officer commanding a force not attached to a Command.

10. Of the extraordinary Courts-martial the Summary General Court-martial corresponds to the Field General Court-martial of the Army Act and to the Detachment General Court-martial of the present Articles. It is intended also to replace to some extent the General Court-martial which the present Articles allow to be convened under an Order in Council, but which has, as a matter of fact, now fallen into disuse. It may be convened by an officer specially empowered by the Government of India or by the Commander-in-Chief in India, or the General Officer of a Command, or by an Officer Commanding any detached portion of Her Majesty's troops on active service, when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by an ordinary General Court-martial.

It has the same powers as a General Court-martial, and differs from a General Court-martial chiefly in this, that it may consist of any number of officers not less than three, that these officers may be either British officers or Native officers, or both combined, as the convening officer thinks fit, that it may be convened and the proceedings may be recorded in the form in which a Field General Court-Martial under the Army Act is convened and records its proceedings, that is, without recording the evidence, unless the convening officer specially directs the evidence together with the prisoner's statement in defence to be fully

recorded; and that a sentence passed by it, and not exceeding that which might be passed by a District Court-martial, is valid without confirmation, while more severe sentences passed by it are confirmed by the convening officer.

11. The Summary Court-martial corresponds to the Summary Court-martial of the present Articles. It is an institution peculiar to Indian military law. It may be held by the Commanding Officer, *being a combatant officer*, of any corps or department of Her Majesty's Indian Forces or of any detachment thereof, or by the Commanding Officer of any British corps or detachment to which Native combatant details are attached. It consists of the Commanding Officer sitting with two other officers, who attend to watch the trial and sign the proceedings. Its ordinary functions are restricted to the trial of any person under the command of the officer holding the trial, except an officer, medical subordinate or warrant officer, but a member of an Army Hospital Corps may be tried by Summary Court-martial by any officer authorized in this behalf by the Officer Commanding the district. It can take cognizance of any of the less serious offences punishable under the Articles where they do not happen to be offences committed against the officer holding the trial, and when there is grave reason for immediate action, or reference cannot, without detriment to discipline, be made to superior authority, of any offence whatever. When held by an Officer Commanding a corps or department, it can pass any sentence except one of death, transportation or imprisonment for a term exceeding one year, but when held by an Officer Commanding a detachment it cannot pass a sentence of imprisonment for a term exceeding six months.

A sentence of a Summary Court-martial, except when it is a sentence passed by an officer of less than five years' service, will not require confirmation, but the proceedings in all cases must, without delay, be submitted to the Commander-in-Chief or some other superior officer, who is empowered, if he thinks fit, to set aside the trial on the merits of the case, but not on merely technical grounds.

12. *Article 117A* allows the Governor General in Council to modify the provisions of the Indian Evidence Act as applied to Courts-martial.

13. *Article 120*.—This provision, differing from the corresponding provision of the Army Act, will empower the officer to whom the proceedings of a Court-martial are submitted for confirmation to direct, when the proceedings are sent back for revision, additional evidence to be taken when necessary.

This seems desirable in order to avoid the necessity for ordering a fresh trial in cases where, as may happen in outlying stations in this country, irregularities and omissions are apt to occur.

Miscellaneous.

14. *Article 132*.—Following on the principles of the Army Act, it will now be possible for a Court-martial to reduce a non-commissioned officer to a junior grade instead of necessarily being compelled to reduce him to the ranks; and further a Court-martial will be in a position to award, on occasion, a duplicate punishment, as, for example, dismissal coupled with one of the other punishments awardable under the article.

15. *Article 151*.—This proviso is intended to do away with the anomaly of a sentence of less than three months' hard labour imprisonment having either to be commuted to simple imprisonment, or, if not commuted, losing the services of a soldier for perhaps a comparatively venial offence, as it is held to be prejudicial to the interests of a regiment to receive back into the ranks a person who has been an inmate for any time of a civil jail.

16. *Article 155* provides a necessary safeguard to the soldier who, having been convicted by the civil power in a Court of first instance, is acquitted on appeal.

It further provides for the temporary retention in the ranks of a soldier who, on active service, has been sentenced to transportation or imprisonment, and declares the time the soldier is so retained shall be reckoned as part of his term of transportation or imprisonment.

17. *Article 161A*, following generally on the provisions of the Army Act, makes due provision for the preservation of the proceedings of Courts-martial, and the means by which these records will be available to persons interested.

18. *Article 162*.—The amendments will empower the Court of Enquiry not only to declare the unauthorised absence and the period thereof, but also to take evidence upon oath as to any deficiency of Government property which had been entrusted to the absentee, and the recorded declaration thereof will be, at any subsequent trial, presumptive evidence of that deficiency.

19. *Article 164*.—Power is given to a General Officer Commanding a District to summarily reduce a non-commissioned officer to a lower grade or to the ranks.

The want of this power has been greatly felt and is considered to be a very desirable power to grant to General Officers Commanding Districts.

20. *Articles 171 to 175*.—Civil offences committed beyond British India, or on active service within British India. These articles will entirely remove the difficulties which have not unfrequently been experienced in dealing with civil offences of the graver classes committed by soldiers when serving beyond the limits of British India.

The Criminal Courts are given concurrent jurisdiction with Courts-martial over such offences. Conflicts may at times arise, but, to prevent any difficulty from this, it is provided that when the two classes

of Courts have concurrent jurisdiction it will be for the military authorities to decide in the first instance on the tribunal to which the case is to be submitted; but that, if the ordinary Criminal Court having jurisdiction is of opinion that the case ought to be tried before itself, it may require the military authorities to stop their proceedings pending a reference to the Governor General in Council.

Article 173 is quite a new provision, but it is in accordance with the practice which has to some extent at least prevailed under the existing law when violence or threats have been made against a superior officer.

It provides that certain grave offences involving violence or threats against any person subject to military law shall, though committed in British India, be cognizable by a Court-martial.

The British soldier is, throughout the greater part of British India, triable by a Court-martial for a civil offence.

The Native soldier, on the contrary, is triable by Court-martial only for military offences, and the Indian Articles in defining these offences do not provide expressly for the case of a soldier killing, or inflicting some serious injury on, his superior officer. In such a case, therefore, the Native soldier ought, strictly speaking, to be made over for trial to the ordinary Criminal Court; but it is thought sometimes desirable that he should be tried by a Court-martial, which would dispose of the case rapidly and with a due regard to the interests of discipline; and he is accordingly put on his trial before a Court-martial "for assaulting his superior officer"—an offence punishable with death or any less penalty under the existing Articles, and thus substantial justice is done and the ends of discipline are secured, though by a procedure which must be allowed to be somewhat irregular. It should be observed that, apart from the irregularity of trying for a mere assault a man who is guilty perhaps of murder, this mode of dealing with such cases is practicable only under a law which, like the present Articles, makes all assaults on a superior officer indiscriminately punishable with death without taking account, as the Army Act does, of circumstances so important as that of the officer being in the execution of his duty or otherwise, or that of the offence being committed on active service or in a cantonment; and such a law it seems difficult to maintain.

It has accordingly been thought better to recognize the fact that it is desirable in the interests of discipline that certain civil offences whether against a superior officer or other person subject to military law should be triable by a Court-martial instead of, exclusively, by an ordinary Criminal Court, and to make them triable by a Court-martial in the same way as civil offences committed by a British soldier.

21. *The concluding section* gives the Governor General in Council power to apply all or any of the provisions of the Articles as amended by this Bill to any force raised in India under the authority of the Governor General in Council, with respect to which there may be doubt whether it forms part of Her Majesty's Indian Army. It will, it is thought, be found useful as affording a means of removing the difficulties which have occasionally been felt regarding the application of any form of military law to certain forces which are maintained chiefly for local purposes under the control of the Governor General's Agents in Native territory, and which are entirely distinct from the forces of Native States known as Imperial Service Troops.

The 13th August 1894.

(Signed) HENRY BRACKENBURY.

J. M. MACPHERSON,
Offg. Secretary to the Government of India.