



THE CEYLON GOVERNMENT GAZETTE

EXTRAORDINARY

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Appointments, &c., by the Governor-General

No. 1069 of 1950

G. G. O. No. R. 45/1.

IT is hereby notified that HIS EXCELLENCY THE GOVERNOR-GENERAL has been pleased to appoint Mr. CHELLAPAH THIAGALINGAM and Mr. EMIL GUY WIKRAMANAYAKE to be of His Majesty's Counsel for the Island of Ceylon.

By His Excellency's command,

A. C. M. HINGLEY,

Acting Secretary to the Governor-General.

Governor-General's Office,
Nuwara Eliya, October 6, 1950.

Government Notifications

L. D.—B. 97/50.

The Army Act, No. 17 of 1949

REGULATIONS made by the Minister of Defence and External Affairs under Section 155 of the Army Act, No. 17 of 1949.

K. VAITHIANATHAN,
Permanent Secretary,

Ministry of Defence and External Affairs.
Colombo, September 28, 1950.

REGULATIONS

A. Responsibilities of Officers convening Courts-Martial

1. (1) An officer before convening a court-martial shall first satisfy himself that the charges to be tried by the court-martial are for offences referred to in the Army Act, and that the evidence justifies a trial on those charges, and, if not so satisfied, shall order the release of the accused or refer the case to a superior authority. He shall also satisfy himself that the case is a proper one to be tried by the description of court-martial which he proposes to convene.

(2) The convening officer shall appoint the members who are to form the court-martial, and may also appoint such number of waiting members as he thinks expedient to take the place of members who have been successfully challenged under these regulations (hereinafter referred to as "waiting members").

(3) The convening officer shall send to the President of the court-martial the original charge-sheet on which the accused is to be tried and any summary or abstract of evidence prepared previously in connexion with his case.

2. When a soldier is to be charged for a serious offence and charges for minor offences are pending against him, or the circumstances surrounding and the nature of the serious offence disclose minor offences, the convening officer may use his discretion in striking out any minor offence or directing that it shall not be proceeded with.

3. In deciding the description of a court-martial before which a charge shall be tried, the convening officer shall bear in mind that there are few offences which cannot effectually be dealt with by a district court-martial. In cases, however, of serious offences, when a state of discipline in an area or corps renders a serious example expedient or when the accused bears a bad character, he may order a general court-martial.

4. No officer shall be eligible for serving on a court-martial—

(a) if he is not subject to military law or if he is disqualified to serve under the provisions of Part IX of the Army Act; or

(b) if he is the officer who convened the court; or

(c) if he has a personal interest in the case; or

(d) if he has not—

(i) in the case of a district court-martial, held a commission for at least two whole years; and

(ii) in the case of a general court-martial, held a commission for at least three whole years.

For the purpose of computing the period specified in clause (d) of this regulation, "reckonable former service" within the meaning of the Army Pay Code shall be taken into account.

5. (1) A court-martial shall, as far as seems to the convening officer practicable be composed of officers of corps different from that of the accused, and in no case shall be composed exclusively of officers of the same regiment or battalion, unless the convening officer states in the order convening the court-martial that in his opinion other officers are not, having regard to the exigencies of the service available, and also, if he belongs to the same regiment or battalion as the accused that an order to convene a court composed partly of other officers cannot be obtained within a reasonable time.

(2) At least one of the members of a court-martial trying an accused belonging to a corps of the Volunteer Force shall belong to the same unit as the accused, unless the convening officer states in the order convening the court-martial that, in his opinion, having regard to the exigencies of the service, it is not practicable.

6. (1) In the case of a general court-martial, three at least of the members must not be below the rank of Captain, but so, however, that an officer of a rank below that of Captain shall not be a member of a general court-martial for the trial of a field officer.

(2) The members of a court-martial for the trial of an officer shall be of an equal, if not superior, rank to that officer, unless in the opinion of the convening officer to be stated in the order convening the court, officers of that rank are not, having regard to the exigencies of the service, available.

(3) When the commanding officer of a corps is to be tried, as many members as possible shall be officers who

have held or hold commands equivalent to that held by the accused.

7. (1) In the case of a general court-martial, when the trial is likely to be prolonged, it shall usually be expedient to form a court consisting of a larger number than the legal minimum specified in section 46 of the Army Act. Waiting members shall also be detailed to meet reduction by challenge.

(2) In the case of a district court-martial, the court shall ordinarily consist of three members.

(3) A district court-martial convened to try doubtful or complicated cases shall, when possible, consist of five members.

(4) Where a district court-martial consists of the minimum number of members specified in section 50 of the Army Act, not more than one member shall be a subaltern.

8. (1) The president of a court-martial must be named in the order convening the court-martial. The members and the waiting members may be mentioned by name or the number, ranks and the unit to which they belong may alone be named.

(2) The order convening the court-martial shall be substantially in the form specified in the First Schedule hereto.

9. It shall be essential that the order convening the court-martial shall be free from alterations or erasures as regards the portion relating to the members appointed to compose the court-martial. Where alterations in the composition of the court-martial are necessary at any time after such order has been prepared, such order shall be withdrawn and a new order substituted. This procedure shall not be necessary when a waiting member is directed to serve on a court-martial.

10. When a soldier is to be tried for any offence, the particulars of his character and former convictions by courts-martial or by civil courts when serving under previous attestations shall be obtained, both for the information of the convening officer and for the purpose of being given in evidence before the court-martial at the end of the trial when the punishment is to be given. The particulars of all such convictions shall be on a special form so that the court may more easily obtain a comprehensive idea of the character of the accused. Convictions by civil courts for offences committed while the soldier was an absentee without leave or a deserter shall also be included in the form.

11. An accused for trial shall be examined by an army medical officer on the morning of each day on which the court-martial is ordered to sit, and his commanding officer shall be responsible for ensuring that no accused is brought before a court-martial if in the opinion of such medical officer he is unfit to undergo his trial.

12. (1) An accused brought before a court-martial shall, if he is an officer, or a warrant officer or a non-commissioned officer, be attended by the officer, warrant officer or non-commissioned officer having him in custody or, if of lower rank, by an escort.

(2) The officer, warrant officer, non-commissioned officer or escort in charge shall be responsible for his safe conduct, but shall obey the directions of the court-martial while the accused is in the court.

(3) An accused shall not be handcuffed, unless it is absolutely necessary for the purpose of preventing his escape or rescue or restraining violent conduct.

B. Preparation for Defence by Accused

13. An accused for whose trial a court-martial has been ordered to assemble shall be afforded a proper opportunity for preparing his defence, and shall be allowed free communication with his witnesses, and with any friend, defending officer or legal adviser with whom he may wish to consult.

14. (1) As soon as practicable after an accused has been remanded for trial by a court-martial, and in any case not less than twenty-four hours before his trial, he shall be given gratis a copy of any summary or abstract of evidence, prepared previously under the Army Act or any regulation made thereunder, relating to his case.

(2) Any rights of the accused under these regulations in regard to the preparation of his defence, including his right to be assisted or represented at the trial shall be explained to him. He shall also be asked to state in

writing whether or not he wishes to have an officer assigned by the convening officer to represent him at the trial. The convening officer shall be informed whether or not the accused has indicated his desire to be represented by an officer assigned by the convening officer.

(3) If any summary or abstract of evidence has been taken later, a copy thereof shall be given gratis to the accused as soon as may be.

15. (1) The accused, before his trial, shall be informed by an officer of every charge on which he is to be tried. He shall also be informed that, on his giving the names of any witnesses he may desire to call in his defence reasonable steps shall be taken for procuring their attendance, and those steps shall be taken accordingly. The interval between his being so informed and his trial shall not be less than twenty-four hours.

(2) The officer, at the time of so informing the accused, shall give the accused a copy of the charge-sheet, and where the accused is a soldier, shall, if necessary, explain the charge-sheet and charges to him, and also if he is illiterate read the charges to him.

(3) A list of the ranks, names, and corps (if any) of the president and members who are to form the court-martial, and where waiting members are named, also of those members, shall, as soon as the president and members are so named, be delivered to the accused if he desires it.

16. (1) Any number of accused may be charged jointly and tried together for an offence alleged to have been committed by them together, in cases where such accused in similar circumstances may be so tried by civil courts.

(2) Where it is intended that accused should be tried together, notice of such intention shall be given to each of the accused at the time of his being informed of the charge.

(3) Any accused notified under paragraph (2) may claim, either by notice to the convening officer or, when charged before the court-martial, by notice to the court, to be tried separately, on the grounds that the evidence of one or more of the other accused proposed to be tried together with him is material to his defence. The convening officer of the court, if satisfied that the evidence is material and if the nature of the charge admits of it shall allow the claim, and the person making the claim shall be tried separately.

C. Assembly of the court-martial and its responsibilities

17. (1) The members of the court-martial shall take their seats according to their army rank.

(2) The president shall be responsible for the trial being conducted in proper order, in accordance with the Army Act, and in a manner befitting a court of justice.

(3) It is the duty of the president to see that justice is administered, and that the accused has a fair trial, and that he does not suffer any disadvantage in consequence of his position as a person under trial or of his ignorance or of his incapacity to examine or cross-examine witnesses or to make his own evidence clear or intelligible, or otherwise.

18. (1) On the court-martial assembling, the order convening the court-martial shall be laid before it together with the charge-sheet and any summary or abstract of evidence prepared previously or a true copy thereof.

(2) The court-martial shall also be provided with a list specifying the ranks, names, and corps of the members appointed to serve on the court; and it shall be the first duty of the court to satisfy itself that it is legally constituted, that is to say—

- (a) that so far as the court can ascertain, the court has been convened in accordance with the Army Act; and these regulations;
- (b) that the court consists of a number of members not less than the legal minimum, and not less than the number detailed;
- (c) that each of the members so assembled is eligible and not disqualified from serving on the court-martial;
- (d) that the president is of the required rank and duly appointed; and

(e) in the case of a general court-martial, that the members are of the required rank.

(3) The court-martial, shall further, if a judge-advocate has been appointed, ascertain that the judge-advocate is duly appointed, and is not disqualified from acting at that court-martial.

(4) The court-martial, if not satisfied on the above matters shall report its opinion to the convening authority, and may adjourn for that purpose.

19. (1) The court-martial when satisfied on the aforesaid matters, shall satisfy itself in respect of each charge about to be brought before it—

(a) that it appears to be laid against a person amenable to military law, and to the jurisdiction of the court; and

(b) that each charge discloses an offence under the Army Act, and is so explicit as to enable the accused readily to understand what he has to answer and is framed in accordance with the following requirements:—

(i) Every charge shall begin with the name and description of the person charged, and shall state, in the case of an officer, his rank, and name, and corps (if any), and in the case of a soldier, his number, rank, name, and corps (if any), and where he does not at the time of the trial belong to the regular force, shall show by the description of him, or directly by an express averment, that he is amenable to military law in respect of the offence charged.

(ii) Each charge shall specify one offence only, and in no case shall an offence be described in the alternative in the same charge.

(iii) Each charge shall be divided into two parts—

(a) The statement of the offence; and
(b) The statement of the particulars of the act, neglect, or omission constituting the offence.

(iv) The offence shall be stated, if not a civil offence, in the words of the Army Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words.

(v) The particulars shall state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect, or omission which it is intended to be proved against him as constituting the offence.

(vi) The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge

(vii) When it is intended to prove any facts in respect of which any deduction from ordinary pay is to be awarded as a consequence of the offence charged, the particulars shall state those facts.

(2) A charge sheet shall not be invalid by reason only of any mistake in the name or description of the person charged, if the accused does not object to the charge-sheet and it is not shown that injustice has been done to the person charged.

(3) In the construction of a charge-sheet or charge there shall be presumed every proposition which may reasonably be presumed to be impliedly included, though not expressed therein.

(4) The court-martial, if not satisfied on the aforesaid matters shall report its opinion to the convening officer and may adjourn for that purpose.

20. When a court-martial sits in closed court for any deliberation amongst the members or otherwise; no person shall be present except the members, the judge-advocate, and any officers under instruction; and the court-martial may either retire or may cause the place

where it sits to be cleared of all other persons not entitled to be present.

Except as above mentioned, all the proceedings shall be in open court and in the presence of the accused.

21. (1) Save as hereinafter provided in this regulation, a court-martial may sit at such times and for such period between the hours of seven in the morning and seven in the evening as may be fixed by the Commander of the Army or an officer authorised by him in that behalf.

(2) If the court-martial considers it necessary to continue a trial after seven p.m., it may do so, but if it does so, it shall record in the proceedings its reason for so doing.

(3) In cases requiring an immediate example, or when the convening officer, or the Commander of the Army certifies under his hand that it is expedient in the interests of the service, trials may be held at any hour.

(4) If the court-martial or the convening officer, or other superior military authority, thinks that military exigencies or the interests of discipline require the court to sit on Sunday, Christmas Day, or Good Friday, it may sit accordingly, but otherwise it shall not sit on any of those days

22. When a court-martial is assembled and the accused has been charged, it shall, subject to the provisions of the Army Act and of these regulations continue the trial from day to day and sit for a reasonable period on every day unless it appears to the court that an adjournment is necessary for the purposes of justice, or that such continuance is impracticable.

23. (1) A court-martial in the absence either of the president or judge-advocate (if any) shall not proceed and if necessary shall adjourn.

(2) The senior officer in attendance may also, for military exigencies, adjourn or prolong the adjournment of the court.

(3) Any adjournment may be made from place to place as well as from time to time. If the time to which the adjournment is made is not specified, the adjournment shall be until further orders from the president. If the place to which the adjournment is made is not specified, the adjournment shall be to the same place or to such place as may be specified in further orders given by the president.

24. Where, in consequence of anything arising while the court-martial is sitting, it is unable, by reason of dissolution under the provisions of section 61 of the Army Act or otherwise, or of the absence of the president, to continue the trial, the president, or in his absence, the senior member present shall immediately report the facts to the convening officer.

25. Where a court-martial is dissolved before the finding, or, in case of a finding of guilty, before the sentence, the proceedings are null, and the accused may be tried before another court-martial.

26. In case of the death of the accused or of such illness of the accused as renders it impossible to continue the trial, the court-martial shall ascertain the fact of the death or illness by evidence, record that fact and adjourn and transmit the proceedings to the convening officer.

27. A member of a court-martial who has been absent while any part of the evidence on the trial of an accused person is taken can take no further part in the trial by that court of that person, but the composition of the court shall not be affected except as provided in section 61 of the Army Act.

28. A member cannot be added to a court-martial after the accused has been arraigned.

29. Every member of a court-martial must give his opinion by word of mouth on every matter which the court has to decide, including the sentence, notwithstanding that he may have given his opinion in favour of acquittal.

30. Every question shall be determined by an absolute majority of the opinions of the members of the court-martial, and in the case of an equality of opinions the president's second or casting vote shall be reckoned as determining the majority.

31. The opinions of the members of the court-martial shall be taken in succession, beginning with the member having the most junior rank.

32. If any objection on any matter of law, evidence, or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or accused

or counsel or defending officer (as the case may be), shall have a right to answer the objection and the person raising the objection shall have the right of reply.

33. When the court-martial has satisfied itself as to the aforementioned matters it shall cause the accused to be brought before the court. The prosecutor shall then take the place specified for him in the court.

34. It shall be the duty of the prosecutor to assist the court-martial in the administration of justice, to behave impartially, to bring the whole of the transaction before the court-martial, and not to take any unfair advantage of, or suppress any evidence in favour of, the accused.

35. The prosecutor may not refer to any matter not relevant to the charge or charges before the court-martial, and it is the duty of the court-martial to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor, and to prevent the prosecutor from commenting at any time on the failure of the accused or his wife to give evidence.

36. (1) The court-martial shall allow great latitude to the accused in making his defence. He must, however, abstain from any remarks contemptuous or disrespectful towards the court-martial, and from coarse and insulting language towards others, but he may, for the purposes of his defence, impeach the evidence and the motives of the witnesses and prosecutor, and charge other persons with blame and even criminality, subject, if he does so, to any liability which he may thereby incur.

(2) The court-martial may caution the accused as to the irrelevance of his defence, but shall not, unless in special cases, stop his defence solely on the ground of irrelevance.

37. The order convening the court-martial shall be read in the hearing of the accused and the court-martial shall ascertain that it is constituted of officers to whom the accused makes no reasonable objection.

D. Challenge

38. The accused has no right to object to the prosecutor or judge-advocate.

39. (1) The accused shall state the names of all the members of the court-martial to whom he objects before his objection to any individual member is disposed of.

(2) The accused may call any person to make a statement in support of his objection. Such person may be questioned by the accused and by the court-martial.

(3) If more than one member is objected to, the objection to each such member shall be disposed of separately. Such objections shall be disposed of in reverse order to the rank of the member objected to, except that, if the president is objected to, the objection to him shall be disposed of before the objection to any other member. On an objection in respect of any member, the other members present shall declare their opinions on the disposal of the objection, notwithstanding that objections have been made in the case of those other members.

(4) When an objection to a member is allowed, that member shall forthwith retire, and take no further part in the proceedings.

(5) When a member objected to (other than the president) retires, or a member is not available to serve owing to any cause which the court-martial may deem to be sufficient, and there are waiting members, the president shall select a member from the waiting members for the purpose of filling the vacancy.

(6) The eligibility, absence from disqualification and freedom from objection of a person filling a vacancy, including that of the president, shall be ascertained by the court-martial.

E. Swearing of Court, Judge-Advocate, &c.

40. (1) As soon as the court-martial is constituted with the proper number of members who are not objected to, or the objections to whom have been overruled, an oath or affirmation shall be administered to and taken in presence of the accused by each member of the court. Such oath or affirmation shall be substantially in the Form A specified in the Second Schedule hereto.

(2) If there is a judge-advocate, the oath or affirmation shall be administered by him to the president first, and afterwards to the other members of the court-martial, and if there is no judge-advocate, such oath or affirmation shall be administered by the president to the other members of the court, and shall be administered to the president by any member of the court already duly sworn or affirmed.

41. (1) The members of a court-martial may be sworn at one time to try any number of accused then present before it, whether those persons are to be tried together or separately, and each accused shall have power to object to the members of the court, and shall be asked separately whether he objects to any member.

(2) In the case of several accused to be tried separately, the court-martial, upon one of those persons objecting to a member, may, according as it thinks fit, proceed to determine that objection or postpone the case of that person, and administer the oaths or affirmations to the members of the court for purpose of the trial of the other accused.

42. In the case of several accused to be tried separately, the court-martial after the oaths or affirmations have been administered to its members, shall proceed with the cases in succession.

43. Where several accused persons are tried separately by the same court-martial upon charges arising out of the same transaction, the court-martial may, if the court-martial considers it to be desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused until the trials of all such accused have been completed.

44. After the members of the court-martial are all sworn, oaths or affirmations shall be administered in the presence of the accused to the judge-advocate, to every officer present at the proceedings for the purposes of instruction, and to every witness.

45. At any time during the trial, an impartial person may—

- (a) if the court-martial thinks it necessary, and shall, if either the prosecutor or the accused requests it on any reasonable ground, be sworn or affirmed to act as an interpreter; and
- (b) if the court-martial thinks it necessary, be sworn or affirmed to act as a shorthand writer.

46. Before a person is sworn or affirmed as an interpreter or a shorthand writer, the accused shall be informed of the person who is proposed to be sworn or affirmed, and may object to the person on the ground that he is not impartial. If the court-martial thinks that the objection is reasonable, that person shall not act as an interpreter or shorthand writer.

47. (1) The oath or affirmation shall be substantially, in the case of—

- (a) the judge-advocate, in the Form B specified in the Second Schedule hereto;
- (b) every officer present at the proceedings for the purpose of instruction, in the Form C specified in that Schedule;
- (c) every witness, in the Form D specified in the Schedule hereto;
- (d) every shorthand writer, in the Form E specified in that Schedule; and
- (e) every interpreter, in the Form F specified in that Schedule.

(2) The oath or affirmation administered to any person referred to in paragraph (1), other than the judge-advocate shall be administered by the president or by some member of the court-martial or by the judge-advocate.

(3) The oath or affirmation administered to the judge-advocate shall be administered by the president or a member of the court-martial.

F. Arraignment

48. After the members of the court and other persons are sworn, the accused shall be charged for the commission of the offences he is purported to have committed.

The charges shall be read to him, and he will be required to plead separately to each charge as soon as it has been read to him.

49. (1) The convening officer may direct any charges against an accused person to be inserted in different charge-sheets, and where he so directs, the accused shall be charged and up to the stage of the finding tried, upon each charge-sheet separately; and accordingly, the procedure for trial shall, up to that stage, be followed in respect of each charge-sheet.

(2) The trials upon the several charge-sheets shall be taken in such order as the convening officer directs.

50. When the court-martial has tried the accused upon all the charge-sheets it shall, in case the findings being "Not guilty" on all the charges, proceed as directed by paragraphs (1) and (2) of regulation 117; and, in case the finding on any one or more of the charges being "Guilty", proceed as directed by regulations 64 and 118 to 121 in like manner in each case as if all the charges in the different charge-sheets had been contained in one charge-sheet, and the sentence passed shall be of the same effect as if all the charges had been contained in one charge-sheet.

51. If the convening officer directs that, in the event of the conviction of an accused person upon a charge in any charge-sheet, he need not be tried upon the subsequent charge-sheets, the court in such an event may, without trying the accused upon any of the subsequent charge-sheets, proceed as directed by regulations 64 and 118 to 121.

52. Where a charge-sheet contains more than one charge, the accused may, before pleading, claim to be tried separately in respect of any charge or charges in that charge-sheet, on the ground that he will be embarrassed in his defence if he is not so tried separately, and in such a case the court, unless it thinks his claim unreasonable, shall charge and try the accused in like manner as if the convening officer had inserted the said charge or charges in different charge-sheets.

53. If a plea of "Guilty" to any charge in a charge sheet has been recorded as the finding of the court, the provisions of regulation 65 (1) shall not be complied with until after the court-martial has arrived at its findings on all the charge sheets.

54. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with these regulations. The court-martial, after hearing any submission which may be made by the prosecutor or by or on behalf of the accused, shall consider the objection in closed court and shall either disallow it and proceed with the trial, or allow it and adjourn to report to the convening authority; or, if it is in doubt, it may adjourn to consult the convening authority.

55. At any time during the trial, if it appears to the court-martial that there is any mistake in the name or description of the accused in the charge sheet, the court-martial may amend the charge sheet so as to correct that mistake.

56. If on the trial of any charge it appears to the court-martial, at any time before it has begun to examine the witnesses, that in the interests of justice any addition to, omission from, or alteration in, the charge is required, it may report its opinion to the convening officer, and may adjourn; and the convening officer may either direct a new trial to be commenced, or amend the charge and order the trial to proceed upon the amended charge; after due notice to the accused.

57. (1) The accused, before pleading to a charge, may object to the general jurisdiction of the court-martial; and, if he does so, and the court-martial considers that anything stated by him in support shows that it has no jurisdiction, it shall receive any evidence offered in support, together with any evidence offered by the prosecutor in disproof or qualification thereof, and allow any address by or on behalf of the accused and any reply by the prosecutor in reference thereto.

(2) If the court-martial overrules the objection, it shall proceed with the trial.

(3) If the court-martial allows the objection, it shall record its decision and the reasons for it, and report it

to the convening officer and adjourn. Such a decision shall not require any confirmation, and the convening officer shall either forthwith convene another court-martial for the trial of the accused, or order the accused to be released.

(4) If the court-martial is in doubt as to the validity of the objection, it may refer the matter to the convening officer, and may adjourn for that purpose, or record a special decision directing the continuance of the trial leaving the question of jurisdiction to be decided later.

58. If no objection to the general jurisdiction of the court-martial is offered, or if such objection, being offered, is overruled, or if the trial is proceeded with under paragraph (4) of the preceding regulation, the accused person's plea of "Guilty" or "Not guilty" shall be recorded on each charge against him. If he refuses to plead or does not plead intelligibly a plea of "Not guilty" shall be recorded on each charge against him.

59. If an accused person pleads "Guilty", that plea shall be recorded as the finding of the court, but, before it is recorded, the president, on behalf of the court-martial, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular, of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the summary of evidence that the accused ought to plead "Not guilty".

60. Where an accused person pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may, after regulation 59 has been complied with by the court-martial and before the accused is charged on the alternative charge or charges, withdraw such alternative charge or charges without requiring the accused to plead thereto, and a record to that effect shall be made in the proceedings of the court.

61. A plea of "Guilty" shall not be accepted in cases where the accused is liable, if convicted, to be sentenced to death, and where such plea is offered a plea of "Not guilty" shall be recorded and the trial shall proceed accordingly.

62. The accused at the time he offers his general plea of "Guilty" or "Not guilty" to a charge for an offence may offer a plea in bar of trial on the ground that—

- (a) he has been previously convicted or acquitted of the offence by a competent civil court or by a court-martial, or has been dealt with summarily for the offence by his commanding officer or by an officer having power to deal summarily with the case, or a charge in respect of the offence has been dismissed; or
- (b) the offence has been pardoned or condoned by competent military authority; or
- (c) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years, or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years, more than that shorter period.

63. (1) If the accused offers a plea under regulation 62, the court-martial shall record it and if it considers that any fact or facts stated by him are sufficient to support that plea, it shall receive any evidence offered and hear any address made by or on behalf of the accused and the prosecutor with reference to the plea.

(2) If the court-martial finds that the plea offered under regulation 62 is proved, it shall record its finding, and notify it to the confirming officer, and either shall adjourn, or, if there is any other charge against the accused, whether in the same or in a different charge sheet, which is not affected by such plea, may proceed to the trial of the accused thereon.

(3) If the finding that a plea offered under regulation 62 is proved is not confirmed, the court-martial may be re-assembled by the confirming authority, and it shall proceed as if the plea had been found not proved.

(4) If the court-martial finds that a plea under regulation 62 is not proved, it shall proceed with the trial, but such a finding shall be subject to confirmation by the confirming authority.

64. Upon the record of the plea of "Guilty", if there is any other charge in the same charge sheet to which the plea is "Not guilty", the trial shall first proceed with respect to every such other charge, and, after the finding on those charges, shall proceed with the charges on which a plea of "Guilty" has been entered, but if they are alternative charges, the court may either proceed with respect to all the charges as if the accused had not pleaded "Guilty" to any charge, or may, instead of trying him, record a finding of "Guilty" upon any one of the alternative charges to which he has pleaded "Guilty" and a finding of "Not guilty" upon all the other alternative charges.

65. (1) After the record of the plea of "Guilty", if the trial does not proceed on any other charges, the court-martial shall receive any statement which the accused desires to make with reference to the charge, and shall read the summary or abstract of evidence, and annex it to the proceedings, or if there is no such summary or abstract, shall take and record sufficient evidence to enable it to determine the sentence, and the confirming authority to know all the circumstances connected with the offence. This evidence shall be taken in like manner as is directed under these regulations in the case of a plea of "Not guilty".

After evidence has been so taken, or the summary or abstract of evidence has been read, the accused may make a statement in mitigation of punishment, and may call witnesses as to his character.

(2) If from the statement of the accused, or from the summary or abstract of evidence, or otherwise, it appears to the court-martial that the accused did not understand the effect of his plea of "Guilty", the court shall alter the record and enter a plea of "Not guilty", and proceed with the trial accordingly.

(3) If a plea of "Guilty" is recorded, and the trial proceeds with respect to the other charges in the same charge sheet, the proceedings under paragraph (1) shall take place after the findings on the other charges in the same charge sheet are recorded.

(4) Where the accused states anything in mitigation of punishment which in the opinion of the court-martial requires to be proved, and would, if proved, affect the amount of punishment, it may permit the accused to call witnesses to prove the statement.

66. The accused may, if he thinks fit, at any time during the trial, withdraw his plea of "Not guilty", and plead "Guilty", and in such case the court-martial shall at once, subject to a compliance with regulation 59, record the plea and finding of "Guilty", and shall, so far as is necessary, proceed in the manner directed by regulation 65.

67. After the plea of "Not guilty" to any charge is recorded, the court-martial shall ask the accused whether he wishes to apply for an adjournment on the ground that any of these regulations relating to procedure before trial have not been complied with, and that he has been prejudiced thereby or on the ground that he has not had sufficient opportunity for preparing his defence, and shall record his answer.

If the accused shall make any such application, the court-martial shall hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto, and, if it shall appear to the court-martial that the accused has been prejudiced by any non-compliance with any such regulation relating to procedure, or that he has not had sufficient opportunity of preparing his defence, it may grant such adjournment as may appear to it in the circumstances to be proper.

If no such application is made, the proceedings shall continue.

68. The prosecutor may, if he desires, and shall if required by the court-martial, make an opening address. Such opening address shall state the substance of the charge against the accused and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into any unnecessary detail.

69. The evidence for the prosecution shall then be taken.

70. The prosecutor shall not give evidence for the prosecution, unless the evidence is of a merely formal nature or for the purpose of producing documents

which are in his possession. Any evidence given by the prosecutor shall be given after the delivery of his address (if any) and in detail. Before he gives such evidence he shall be sworn:

He may be cross-examined by or on behalf of the accused, and afterwards may make any statement which might be made by a witness on re-examination.

71. (1) At the close of the case for the prosecution, it shall be open to the accused, his counsel or defending officer to submit that the evidence given for the prosecution has not established a prima facie case against him and that he should not, therefore, be called upon for his defence. The court-martial shall consider that submission in closed court, and if it is satisfied that the submission is justified, it shall acquit the accused. The submission may be made in respect of any one or more charges in a charge-sheet.

(2) If the court-martial decides at the close of the evidence for the prosecution that a prima facie case has been made out for the prosecution, the accused shall be told by the court-martial that he may, if he wishes, give evidence as a witness but that if he gives evidence he shall subject himself to cross-examination.

The accused shall then be asked whether he wishes to give evidence as a witness himself, and whether he intends to call any witnesses to the facts of the case other than himself.

72. If the accused states that he wishes to give evidence as a witness himself but does not intend to call any other witness to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, shall be as follows:—

- (a) The accused shall give evidence immediately after the close of the evidence for the prosecution.
- (b) The accused may, if he wishes, call witnesses as to his character.
- (c) The prosecutor may then make a final address for the purpose of summing up the evidence for the prosecution and commenting on the evidence of the accused.
- (d) The accused or counsel or the defending officer (as the case may be), may then make a closing address in his defence.

73. If the accused states that he does not wish to give evidence as a witness himself and does not intend to call any witnesses to the facts of the case, the procedure shall be as follows:—

- (a) If he is not represented by counsel or by an officer subject to military law—
 - (i) the accused may, if he wishes, call witnesses as to his character,
 - (ii) the prosecutor may make a final address for the purpose of summing up the evidence for the prosecution; and
 - (iii) the accused may then make an address in his defence giving his account of the subject of the charge against him. The address may be made orally or in writing.
- (b) If he is represented by counsel or by an officer subject to military law—
 - (i) the accused may make a statement giving his account of the subject of the charge against him which statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court or by any other person;
 - (ii) the accused may, if he wishes, call witnesses as to his character;
 - (iii) the counsel or the defending officer (as the case may be) may then make a closing address; and
 - (iv) if the accused has made the statement referred to in sub-clause (i), the prosecutor may reply; but if the accused has made no such statement, the address of the prosecutor shall precede the closing address of counsel or the defending officer.

74. If the accused states that he wishes to give evidence himself and to call witnesses to the facts of the case, the procedure, whether or not he is represented by counsel or by an officer subject to military law, shall be as follows:—

- (a) The accused or, if he is represented by counsel or by a defending officer, then such counsel or defending officer may make an opening address for the defence.
- (b) The accused shall give evidence as a witness, and call his other witnesses, including, if he so desires, witnesses as to character.
- (c) After the evidence of all the witnesses has been taken, the accused or counsel or the defending officer (as the case may be) may make a closing address.
- (d) The prosecutor may reply.

75. If the accused states that he does not intend to give evidence himself but intends to call witnesses to the facts of the case, the procedure shall be as follows:—

- (a) If he is not represented by counsel or by an officer subject to military law—
 - (i) the accused may make an opening address giving his account of the subject of the charge against him which address may be made orally or in writing;
 - (ii) the accused shall then call his witnesses including, if he so desires, any witnesses as to character,
 - (iii) after the evidence of all the witnesses has been taken the accused may make a closing address; and
 - (iv) the prosecutor may reply.
- (b) If he is represented by counsel or by an officer subject to military law—
 - (i) the accused may make a statement giving his account of the subject of the charge against him which statement may be made orally or in writing but the accused must not be sworn and no question may be put to him by the court-martial or by any other person;
 - (ii) if the accused makes no such statement, counsel or the defending officer (as the case may be) may make an opening address;
 - (iii) the accused shall then call his witnesses, including, if he so desires, any witnesses as to character;
 - (iv) after the evidence of all the witnesses has been taken counsel or the defending officer (as the case may be) may make a closing address; and
 - (v) the prosecutor may reply.

76. (1) The judge-advocate (if any) shall unless he and the court-martial think a summing-up unnecessary, sum up in open court the whole case.

(2) After the summing-up of the judge-advocate, no other address shall be allowed.

G. General Provisions as to Witnesses and Evidence

77. A court-martial shall not receive evidence for the prosecution which is not relevant to the facts stated in the statement of particulars in the charge, or any evidence which is not admissible according to the Evidence Ordinance (Cap. 11).

78. The rules of evidence adopted in civil courts in Ceylon shall be followed by courts-martial, and objections to any question to a witness or to the admission of any evidence may be made accordingly, and a person shall not be required to answer any question or produce any document which he could not be required to answer or produce in a like proceeding before such civil court.

79. The prosecutor is not bound to call all the witnesses whose evidence is in the summary or abstract of evidence given to the accused under regulation 14, but he shall ordinarily call such of them as the accused desires to be called, in order that the accused may, if he thinks fit, cross-examine them, and the prosecutor shall for this reason, so far as seems to the court practicable, secure the attendance of all such witnesses.

80. If the prosecutor intends to call a witness whose evidence is not contained in any summary or abstract of evidence given to the accused, notice of such intention shall be given to the accused a reasonable time before the witness is called, together with an abstract of his proposed evidence; and if the witness is called without such notice or abstract having been given, the court-martial shall, if the accused so desires it, either adjourn after taking the evidence of the witness, or allow the cross-examination of the witness to be postponed, and it shall inform the accused of his right to demand such an adjournment or postponement.

81. The accused shall not be required to give to the prosecutor a list of the witnesses whom he intends to call, but it shall rest with the accused alone to secure the attendance of any witness whose evidence is not contained in the summary or abstract, and for whose attendance the accused has not requested steps to be taken as provided for by regulation 15 (1).

82. (1) The commanding officer of the accused, the convening officer, or, after the assembly of the court-martial, the president shall take the proper steps to procure the attendance of the witnesses whom the prosecutor or the accused desires to call, and whose attendance can reasonably be procured, but the person requiring the attendance of a witness may be required to undertake to defray the cost (if any) of his attendance.

(2) Any witness who is not subject to military law may be summoned to attend by order under the hand of the convening officer, or, after the assembly of the court, under the hand of the president or judge-advocate (if any). The summons shall be substantially in the Form specified in the Third Schedule hereto, and shall be served on the witness either personally or by leaving it with some person at his last or most usual place of abode.

(3) Any witness who is subject to military law shall be ordered to attend by his commanding officer.

83. If such proper steps as are mentioned in the preceding regulation have not been taken in respect of any witness, or if any witness whose attendance could not reasonably be procured before the assembly of the court-martial is essential to the prosecution or defence, the court-martial shall adjourn and report the circumstances to the convening officer.

84. (1) An accused person or his wife is a competent witness for the defence at any stage of the proceedings at which under these regulations evidence for the defence may be given whether the accused is charged solely or jointly with any other person, but neither the accused nor his wife shall be called as a witness, except on the application of the accused.

(2) The failure of the accused or his wife to give evidence shall not be made the subject of any comment by the prosecutor.

(3) The accused when giving evidence shall, unless otherwise ordered by the court, give his evidence from the witness box or other place from which other witnesses give their evidence.

(4) The accused when giving evidence may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer, any question tending to show that he has committed, or been convicted of, or been charged with, any offence other than that with which he is then charged, or is of bad character, unless—

- (a) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged; or
- (b) he is personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establishing his own good character or has given evidence of his good character; or
- (c) he has given evidence against any other person charged with the same offence.

(5) The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during the marriage, nor shall an accused be compelled to disclose any communication made to him by his wife during the marriage.

(6) Where the only witness to the facts of the case called by the defence is the accused, he shall, if he decides to give evidence, give his evidence immediately after the close of the evidence for the prosecution.

85. During the trial a witness other than the prosecutor or accused ought not, except by special leave of the court, to be in court while not under examination, and if while he is under examination a discussion arises as to the allowance of a question or the sufficiency of his answers, or otherwise as to his evidence, he may be directed to withdraw.

86. Every question shall be put to a witness orally by the prosecutor, by or on behalf of accused, or by the judge-advocate, without the intervention of the court-martial, and the witness shall forthwith reply, unless an objection is made by the court-martial, judge-advocate, prosecutor, or by or on behalf of the accused, in which case he shall not reply until the objection is disposed of.

87. The evidence of a witness as taken down shall be read to him after he has given all his evidence and before he leaves the court-martial, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may examine him respecting the correction.

88. In the case of a court-martial at which a shorthand writer is employed, it shall not be necessary to comply with regulation 87 if in the opinion of the court-martial and the judge-advocate, if any, (such opinion to be recorded in the proceedings) it is unnecessary to do so, but, nevertheless, if any witness so desires, that regulation shall be complied with.

89. (1) A witness may be examined by the person calling him, and may be cross-examined by the opposite party to the proceeding, and on the conclusion of the cross-examination may be re-examined by the person calling him on matters raised in the cross-examination.

(2) The court-martial may, if it thinks fit, allow the cross-examination of a witness to be postponed.

90. The president, the judge-advocate (if any) and, with the permission of the court-martial, any of its members may address a question to a witness while such witness is giving his evidence and before he withdraws.

Upon any such question being answered, the questioner may put to the witness any question arising out of the answer which he thinks fit or which he may be requested to put by the prosecutor or by or on behalf of the accused.

91. At the request of the prosecutor or of the accused a witness may, by leave of the court-martial, be recalled at any time before the closing address of or on behalf of the accused, for the purpose of having any question put to him through the president, or judge-advocate (if any).

92. (1) The court-martial may, if it considers it expedient, in the interests of justice, so to do, allow a witness to be called or recalled by the prosecutor before the closing address of, or on behalf of, the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(2) The court may call or re-call any witness at any time before the finding, if it considers that it is necessary in the interests of justice.

H. Defending Officer, Friend of Accused, and Counsel

93. (1) If an accused is not represented at his trial by counsel he may be represented by any officer subject to military law who shall be called "the defending officer" or assisted by any person whose services he may be able to procure and who shall be called "the friend of the accused".

(2) It shall be the duty of the convening officer to ascertain whether an accused not otherwise represented desires to have a defending officer assigned to represent him at his trial and, if he does so desire, the convening officer shall use his best endeavours to ensure that the accused shall be represented by a suitable officer. If owing to military exigencies, or for any other reason, there is, in the opinion of the convening officer, no such officer available for the purpose, the convening officer

shall give a written notice to this effect to the president of the court-martial, and such notice shall be attached to the proceedings.

(3) The defending officer shall have the same rights duties and obligations as appertain to counsel under these regulations.

(4) The friend of the accused may advise the accused on all points and suggest the questions to be put to the witnesses, but he cannot examine or cross-examine the witnesses or address the court.

94. Counsel shall be allowed to appear on behalf of the prosecutor and accused at courts-martial.

95. (1) An accused intending to be represented by counsel shall give to his commanding officer or to the convening officer the earliest practicable notice of such intention and, if no sufficient notice has been given, the court may, if it thinks fit, on the application of the prosecutor, adjourn, to enable him to obtain counsel on behalf of the prosecution at the trial.

(2) If the convening officer so directs, counsel may appear on behalf of the prosecutor, but in that case, unless notice has been given by the accused under paragraph (1) that he intends to be represented by counsel, notice of the direction for counsel to appear for the prosecution shall be given to the accused, not later than seven days before the trial, so as to enable him to obtain counsel to represent him.

96. The counsel who appears before a court-martial on behalf of the prosecutor or accused, shall have the same right as the prosecutor or accused for whom he appears, to call and orally examine, cross-examine, and re-examine witnesses, to make an objection or statement, to address the court-martial, to offer any plea, and to inspect any documents led in evidence, and shall have the right to act in the course of the trial in the place of the person on whose behalf he appears, and he shall comply with these regulations as if he were that person; and in such a case, that person shall not have the right himself to do any of the above matters except as regards the statement referred to in regulations 73 (b) (1) and 75 (b) (i) or except so far as the court-martial permits him to do so.

97. When counsel appears on behalf of the prosecutor, the prosecutor, if called as a witness, may be examined, cross-examined and re-examined as any other witness.

98. (1) Counsel appearing on behalf of the prosecutor shall always make an opening address, and shall state therein the substance of the charge against the accused, and the nature and general effect of the evidence which he proposes to adduce in support of it without entering into unnecessary detail.

(2) Counsel appearing on behalf of the prosecutor shall have the same duties as the prosecutor, and is subject to be stopped and restrained by the court in the manner provided by regulation 35.

99. Counsel appearing on behalf of the accused has the like rights and is under the like obligations as are specified in regulation 36 in the case of the accused.

100. The counsel for the accused must not give to the court any answer or information which is misleading.

101. Counsel, whether appearing on behalf of the prosecutor or of the accused, shall conform strictly to these regulations and to the customs of civil courts in Ceylon relating to the examination, cross-examination, and re-examination of witnesses, and relating to the duties of counsel.

102. If counsel puts to a witness (other than the accused) a question as to a matter which is not relevant except so far as it affects the credit of the witness by injuring his character, and the witness objects to answering the question, the court-martial shall consider whether the witness should be compelled to answer it.

If the court-martial is of opinion that the imputation conveyed by the question would, if true, seriously affect its opinion as to the credibility of witness, it should require the witness to answer the question.

If the court-martial is of opinion that the imputation, if true, would not affect, or would not seriously affect its opinion as to the credibility of the witness, it should disallow the question.

If the question is disallowed, counsel on both sides shall refrain from further examining or commenting on the matter.

103. Counsel shall not state as a fact any matter which is not proved, or which he does not intend to prove in evidence.

104. Counsel shall not, in a question to any witness, assume that facts have been given in evidence which have not been given in evidence, or that particular answers have been given contrary to the facts.

105. Counsel shall treat the court-martial and judge-advocate with due respect, and shall, while regarding the exigencies of his case, bear in mind the requirements of military discipline in the respectful treatment of any superior officer of the accused who may attend as a witness.

106. (1) Neither the prosecutor nor the accused has any right to object to counsel, if properly qualified.

(2) Counsel shall be deemed properly qualified to appear at a court-martial, wherever held, if he is a Barrister-at-Law or an Advocate or Proctor of the Supreme Court of Ceylon.

I. Judge-Advocate

107. Upon any point of law or procedure which arises upon the trial, the court-martial shall be assisted by the opinion of the Judge-Advocate which it should not disregard except for very weighty reasons. The court-martial shall be responsible for the legality of its decisions but it must consider the consequences which may result from a disregard of the advice of the judge-advocate. The court-martial may, in following the opinion of the judge-advocate, record that it has decided in consequence of that opinion.

108. In fulfilling his duties, the judge-advocate shall be careful to maintain an entirely impartial position.

J. Finding and Sentence

109. The court-martial shall deliberate on its finding in closed court.

110. The opinion of every member of the court-martial as to the finding shall be given by word of mouth on each charge separately.

111. The finding on every charge against the accused shall be recorded and, except as mentioned in these regulations, shall be recorded simply as a finding of "Guilty", or of "Not guilty", or of "Not guilty and honourably acquit him of the same".

112. Where the court-martial is of opinion as regards any charge that the facts proved do not disclose the offence charged or of any offence of which he might under the Army Act legally be found guilty on the charge as laid, the court shall acquit the accused of that charge.

113. If the court-martial doubts as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or of any offence of which he might under the Army Act legally be found guilty on the charge as laid, it may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which are to be proved, and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming authority, the court shall re-assemble in closed court to record its finding and shall not receive any further evidence.

114. Where the court-martial is of opinion as regards any charge that the facts which are to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are, nevertheless, sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, it may, instead of a finding of "Not guilty", record a special finding.

The special finding may find the accused guilty on a charge, subject to the statement of exceptions or variations specified therein.

115. Where there are alternative charges, and the facts proved appear to the court not to constitute the offence mentioned in any of those alternative charges, the court-martial shall record a finding of "Not guilty" on that charge.

116. If the court-martial thinks that the facts proved constitute one of the offences stated in two or more of

the alternative charges, but doubts which of these offences the facts do at law constitute, it may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which it finds to be proved and stating that it doubts whether those facts constitute in law the offence stated in such one or another of the charges and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming officer it shall re-assemble in closed court to record its finding and shall not receive any further evidence.

117. (1) If the finding on each of the charges in a charge sheet is "Not guilty", the president of the court-martial shall date and sign the proceedings, the findings shall be announced in open court, and if there are no other charges upon which the trial proceeds, the accused shall be released.

(2) The proceedings shall then, upon being signed by the judge-advocate (if any), be transmitted as soon as possible in like manner as is directed by these regulations in the case where the findings require confirmation.

(3) If the finding on one or more, but not all, of the charges in a charge sheet is "Not guilty", such finding or findings of "Not guilty" shall be announced at once in open court.

118. (1) If the finding on any charge is "Guilty", then, for the guidance of the court-martial in determining its sentence, and of the confirming authority in considering the sentence, the court-martial, before deliberating on the sentence, shall, wherever possible, take evidence on the following matters, that is to say, the character, age, service, rank, and any recognized acts of gallantry or distinguished conduct, of the accused, and the length of time he has been in arrest or in confinement on any previous sentence, and any naval, military, or air force decoration, or military reward or deferred pay of which he may be in possession or to which he is entitled. A record shall be made of such evidence.

(2) Evidence on the above matters may be given by a witness verifying a statement which contains a summary of the entries in the regimental books relating to the accused, and identifying the accused as the person referred to in that summary.

(3) The accused may cross-examine any witness who has given evidence under the preceding provisions of this regulation and may call witnesses to rebut any such evidence. If the accused so requests, the regimental books or a duly certified copy of the material entries therein, shall be produced; and if the accused alleges that the summary is in any respect not in accordance with the regimental books, or such certified copy, as the case may be, the court shall compare the summary with those books or copy, and if it finds it is not in accordance therewith, shall cause the summary to be corrected accordingly.

When all the evidence on the above matters has been given, the accused may address the court thereon and in mitigation of punishment.

(4) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the sentence of the court-martial, it shall be the duty of the prosecutor to call the attention of the court-martial to the fact, and it shall be the duty of the court-martial to enquire into the nature and amount of such additional punishment.

119. (1) Where a court-martial of an officer dealing summarily with a charge under section 42 of the Army Act desires to sentence an officer, other than a warrant officer or non-commissioned officer, to forfeit seniority of rank, the form of punishment may be that he takes rank and precedence in his corps, or in the Army, or in both, as if his appointment to the rank or ranks held by him, and specified in the sentence bore the date of some day or days specified in the sentence and later than the actual date of his appointment; or that he takes precedence in the rank held by him in his corps, or in the Army, or in both, as if his name had appeared a specified number of places lower in the list of his corps, or of the Army, or in both.

(2) Where the court-martial for the trial of a warrant or non-commissioned officer, or where an officer dealing summarily with a charge against a warrant officer under section 42 of the Army Act, desires to award the sentence

of forfeiture of seniority of rank, the form of punishment shall be that he takes rank and precedence as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment.

120. If the court-martial makes a recommendation of mercy, it shall give its reason for its recommendation.

121. Upon the court-martial awarding the sentence, the president shall date and sign the sentence, and such signature shall authenticate the whole of the proceedings, and the proceedings, upon being signed by the judge-advocate (if any), shall as soon as possible be transmitted for confirmation.

K. Sentence of Court-Martial

122. In determining the sentence to be passed on an accused for the commission of an offence, the court-martial shall take into account—

- (a) the nature of the offence and the previous character of the accused;
- (b) the fact that the proposed sentence may involve other punishments under other written law; and
- (c) that attention has been called to the unusual prevalence of that offence in published army orders, if attention has been so called.

123. Members of the Army shall be notified that an offence committed when troops have been called out on active service for the purpose specified in section 19 (1) (a) or section 19 (1) (b) shall usually be punished more severely than the same offence committed when troops have been called out on active service for the purpose specified in section 19 (1) (c).

124. When deliberating the sentence to be passed on an accused, information relating to his previous convictions by court-martial or by civil courts and to any period spent by him as a deserter, shall be given in evidence.

125. (1) The court-martial shall consider if any circumstances have been disclosed by the evidence in extenuation or aggravation of the offence.

(2) Sentences must vary according to the requirements of discipline, but in ordinary circumstances for the first offence, a sentence shall be light. Care must be taken to discriminate between offences due to youth, temper, sudden temptation or unaccustomed surroundings, and those due to premeditated misconduct.

126. If the accused has elected to be tried by a district court-martial instead of submitting to the jurisdiction of his commanding officer, his punishment shall not on that ground be increased. In ordinary circumstances, the court-martial shall not award a heavier sentence than that which such officer has power to award.

127. The punishment of imprisonment shall normally be reserved for offenders convicted of offences of the gravest nature which, in the opinion of the court-martial, render their discharge with ignominy advisable.

128. Where in the opinion of the court-martial, military corrective treatment might prove effective, a short period of detention in detention barracks shall be awarded as punishment in preference to a period of imprisonment in prison for the less serious offences.

129. A soldier who is convicted by court-martial of a purely military offence shall be sentenced to detention in detention barracks rather than to imprisonment unless, in its opinion, the requirements of discipline demand that the offender should suffer the full penalty provided by law, for instance imprisonment for a specified period in prison and discharge with ignominy. Where a court-martial decides to impose a sentence of less than two years' duration for a purely military offence, it shall in ordinary circumstances provide that the sentence shall be spent in detention barracks and not in prison.

130. Where a soldier has been sentenced by a court-martial to imprisonment and, in the opinion of the confirming authority, a sentence of detention would effectively meet the case, action shall be taken under section 65 of the Army Act to commute the sentence accordingly.

131. When a sentence of imprisonment is commuted to one of detention, the term of detention shall in no case exceed the term of imprisonment originally awarded.

132. A sentence of detention, being lower in the scale of punishments than imprisonment, shall not be commuted to one of imprisonment.

133. Where a soldier has been sentenced to imprisonment and to be discharged with ignominy, and the confirming authority, commutes the imprisonment to detention, he shall, in such case, remit the discharge with ignominy, as such a discharge cannot accompany a sentence of detention. When the confirming authority remits a discharge with ignominy, he shall at the same time commute the sentence of imprisonment to one of detention.

134. A soldier awarded detention shall undergo his sentence in a detention barrack or a branch detention barrack. He shall not be sent to a prison for that purpose, but a soldier sentenced to imprisonment may undergo his sentence in a detention barrack.

135. The general instructions specified in the Fourth Schedule hereto are issued for the guidance of courts-martial, but nothing contained in them must be construed as limiting the discretion of the court-martial to pass any legal sentence, whether in accordance with these instructions or not.

136. When an offender is convicted on two or more charges, the sentence shall be that which is considered adequate for the gravest of the offences, with some addition for each of the other charges.

137. (1) Where a sentence of imprisonment is awarded for an offence referred to in any of the following items in the Fourth Schedule hereto, that is to say, items (iii), (iv), (v), (vi), it shall normally be accompanied by a sentence of "discharge with ignominy".

(2) A court-martial in framing sentences, shall observe the following rules:—

- (i) Terms of imprisonment or detention not amounting to six months shall be awarded in days.
- (ii) Terms of imprisonment or detention of one year and two years shall be awarded in years.
- (iii) Other terms of imprisonment or detention shall be awarded in months, or, if required, in months and days.

L. Stoppages awarded by Court-Martial

138. If a court-martial has, in addition to or in lieu of any other punishment, sentenced a member of the army to pay a specified amount to be recovered by way of deductions from his pay, and a sum found on him has been appropriated in part satisfaction of such amount, deductions up to the amount of the balance only shall be recovered from him.

139. When a soldier is to be tried by court-martial for an offence under section 104 of the Army Act and the evidence appears to disclose that by committing such offence, he has obtained a free kit of necessaries to which he was not entitled, the words "thereby obtaining a free kit of necessaries, value" shall be added to the particulars of the charge, the value being assessed according to the Army clothing regulations. If the soldier is convicted of the offence, the court-martial, after satisfying itself that compensation for such free kit is due to the public, shall normally, in addition to or in lieu of any other punishment, sentence the soldier to pay the amount specified in the charge as the value of such kit. Such sentence shall provide also that such amount shall be recovered by way of deductions from his pay.

140. When a soldier who has improperly enlisted into the Regular Force while belonging to the Regular Reserve is tried by court-martial on the charge of making a false answer on attestation, within three months of the date of his improper enlistment, but not otherwise, the words "and by his enlistment obtained a free kit of necessaries, value" shall be added, in an appropriate case, to the particulars of the charge, and (unless the accused pleads "Guilty") proved in evidence, in order to enable the court-martial to sentence him, in addition to or in lieu of any other punishment, to pay the amount, specified in the charge as the value of such kit, to be recovered by way of deductions from his pay.

141. If the soldier is relegated to the Regular Reserve after conviction by court-martial, the deductions referred to in regulation 140 shall be enforced, but if he is held to serve on his last attestation, the payment by way of such deductions shall be remitted.

142. If the soldier is relegated to the Regular Reserve without trial within three months of the date of his improper enlistment from such Reserve, he shall be

required to make good the value of the free kit of necessaries, such value being assessed in accordance with the provisions of the army clothing regulations.

143. If it is desired to sentence a soldier who has fraudulently enlisted to have deductions made from his pay in respect of a deficiency in his public clothing, a charge must be laid under section 115 of the Army Act. If his trial for fraudulent enlistment is dispensed with by the competent military authority, a charge under section 115 of the Army Act may nevertheless be laid against him, and disposed of by his commanding officer, or, if the soldier elects to be tried by court-martial, by the court. The value of the public clothing shall be reckoned in accordance with the provisions of the army clothing regulations.

M. Confirmation and Promulgation of Proceedings

144. As soon as the proceedings of a court-martial are received by an officer having power to confirm them, he may, and in normal circumstances shall, at once order the release of the accused if the sentence awarded by the court-martial is lower in the scale of punishments set out in section 133 of the Army Act than dismissal from the army in the case of an officer, or discharge with ignominy in the case of a soldier. If the sentence is, or includes, forfeiture of seniority of rank, or reduction to a lower grade or to the ranks, instructions shall, at the same time, be given that the accused shall not, unless the exigencies of the service demand it, be given any duty whatsoever until after the promulgation of the proceedings; and in such cases the accused may, in the interests of discipline, be placed under open arrest. In all other cases, an accused shall be kept in close arrest until the promulgation of the proceedings.

145. It is the province of a confirming authority, by the exercise of his powers of commutation or mitigation, to regulate the amount of punishment awarded by court-martial, and to ensure that the findings and sentences are legal, and that no sentence shall be heavier than the interests of discipline and the merits of the particular case require. In exercising his powers of commutation or mitigation, such authority shall be guided by the principles and instructions laid down in the appropriate provisions of regulations 122 to 137 (both regulations inclusive) and of the Fourth Schedule, in order that having due regard to the soldier's character, and such other matters, no great disparity may exist between sentences awarded for similar offences.

146. A confirming authority, when the proceedings require confirmation, may confirm or refuse confirmation, or may send back the finding and sentence, or either of them, for revision once, but not more than once, and, where the finding only is sent back for revision, the court-martial shall have power, without any direction, to revise the sentence also.

147. When the confirming authority finds it necessary to comment on the proceedings of a court-martial, whether original or revised, the remarks of such authority shall be separate from, and form no part of the proceedings. They shall be communicated in a separate minute to the members of the court-martial, or, in exceptional cases where in the interests of discipline a more public communication is required, they shall be made known in Army Orders. Such authority shall only comment on a finding of "Not guilty" in the manner laid down in regulation 150. Such authority shall not comment on the inadequacy of a sentence.

148. When it appears from a perusal of the proceedings that the mental condition or fitness for service of the accused is open to doubt, the confirming authority shall, after confirming the sentence take steps to ensure that the commandant of the detention barrack, or the governor of the prison, to which the soldier is committed to undergo his sentence is informed of the circumstances, with a view to the soldier so committed being placed under medical observation and, if considered desirable, admitted to a military hospital.

149. Where statements made by an accused in mitigation of punishment, reveal facts which might influence the confirming authority in determining the proper sentence, or contain matter which might call for disciplinary action, investigation into the truth or otherwise of such statements shall, as far as possible, be made by such authority prior to confirmation.

If such investigation is likely to cause substantial delay in confirmation, the confirming authority may confirm the proceedings forthwith, and make investigation with a view to subsequent reconsideration.

150. If the authority who would have confirmed the finding and sentence of a court-martial, had the trial resulted in a conviction, thinks it necessary to remark on the proceedings in a case where the accused has been acquitted, such authority shall not annex his observations to the proceedings, but shall embody them independently in a letter for the purpose of reference.

151. (1) If it appears to the confirming authority that the proceedings of a court-martial are illegal, or involve substantial injustice to the accused, and such authority has not confirmed the finding and sentence, he shall withhold his confirmation. If he has confirmed the finding and sentence, he shall direct the record of the conviction to be removed, and the accused to be acquitted. If such authority is in doubt, he may refer the case for the opinion of an authority superior in rank to himself, and competent of acting as a confirming authority.

(2) If the proceedings can be legally sustained, and there is no substantial injustice, but an irregularity has occurred, the conviction may take effect, but the confirming authority shall consider what reduction of the sentence (if any) is due to the soldier.

152. When a soldier has been tried and sentenced by court-martial, and the proceedings have been confirmed, but the sentence has been wholly remitted, the remission does not extend to any penalty or forfeiture consequent on the conviction.

153. Any officer or soldier who considers himself aggrieved by the finding or sentence of a court-martial may forward a petition to the confirming authority through his commanding officer.

154. When a general court-martial is held, the proceedings shall be transmitted by the judge-advocate direct to the officer who convened the court, and the latter shall forward them together with his recommendation and remarks, to the Commander of the Army. If the sentence awarded is one which requires to be confirmed by the Governor-General, the Commander of the Army shall transmit the proceedings to the Permanent Secretary, Ministry of Defence and External Affairs, for transmission to the Governor-General for such confirmation. If the sentence awarded is one which does not require confirmation by the Governor-General, the Commander of the Army shall retain the proceedings for such action as may be necessary.

155. As soon as the confirming authority has dealt with any proceedings by way of confirmation or otherwise, he shall forward the proceedings direct to the commanding officer of the unit to which the accused belongs, in order that they may be promulgated without delay.

156. In the event of a court-martial finding against the accused on all or some of the charges its proceedings including the charges, finding, sentence and confirmation or other action of the confirming authority shall be promulgated in all cases by communication to the accused. Promulgation shall be effected by the above particulars being read out on parade only in those cases in which the confirming authority specially so directs. The date of promulgation shall be recorded on the proceedings.

157. The results of courts-martial shall be published in the Orders, relating to the units, in which the notice of the convening of the court appeared. In every case such results shall be published in Part I Orders in the case of officers and in Part II Orders in the case of soldiers.

158. If, subsequent to conviction but before promulgation can be effected, an accused absents himself, and a declaration by a court of inquiry under section 148 of the Army Act is made in respect thereof, or in the case of an officer if his commanding officer furnishes a certificate (to be annexed to the court-martial proceedings) that the accused has been absent without leave for a period of 21 clear days, the proceedings of the court-martial may be promulgated by the publication of the particulars referred to in regulation 156, in the case of an officer in Part I, and in the case of a soldier in Part II, Orders of the unit. They shall, however,

forthwith be communicated to the accused on his apprehension (if liable for further service) or surrender.

159. All proceedings of courts-martial, whether transmitted before or after promulgation, shall be accompanied by a letter specifying the nature of the contents.

160. The proceedings of a general court-martial shall, when promulgated, be sent through the commanding officer of the accused to the Commander of the Army, who shall forward them to the Permanent Secretary, Ministry of Defence and External Affairs.

161. The proceedings of a district court-martial shall, when promulgated, be returned to the Commander of the Army, who shall make any necessary communication respecting them to the president and judge-advocate (if any) for their information.

162. The proceedings of any court-martial which have not resulted in a conviction, or for any reason have not been confirmed, shall be sent to the Commander of the Army.

163. In forwarding proceedings which disclose any matters which appear to require investigation, such as allegations as to irregularities, or statements as to the mental condition (or fitness for service) of the accused, made either in mitigation of punishment or in the recommendation of the court-martial, or otherwise, the covering letter shall state that steps are being taken, or have been taken, to inquire into the matter in question. In cases where the accused has been convicted of misappropriating sums of money which involve errors in his or other soldiers' pay accounts, the covering letter shall also state whether appropriate steps are being taken, or have been taken, to adjust the accounts.

164. Where the finding or sentence is sent back for revision, the court-martial shall re-assemble in closed court, and shall not receive any further evidence.

165. Where the finding is sent back for revision, and the court-martial does not adhere to its former finding, it shall revoke the finding and sentence, and record a new finding, and, if the new finding involves a sentence, pass sentence afresh.

166. Where the sentence alone is sent back for revision, the court shall not revise the finding.

167. After revision the president shall date and sign the decision of the court-martial, and the proceedings, upon being signed by the judge-advocate (if any), shall as soon as possible be transmitted for confirmation.

168. Whenever it appears that a court-martial had jurisdiction to try any person, and that that person was charged with some offence or offences under the Army Act, and was shown by legal evidence to have been guilty of the offence or one of the offences charged, the finding in respect of the offence or offences of which he is so shown to be guilty, and the sentence, may be confirmed, and if so confirmed shall be valid, notwithstanding any deviation from these regulations or notwithstanding that the charge-sheet has not been signed by the commanding officer or the convening officer if the charges have, in fact, before trial been approved by such officer, or notwithstanding any technical defect or objection, unless it appears that any injustice has been done to the accused; but nothing in this regulation shall relieve an officer from any responsibility for any wilful or negligent disregard of any of these regulations.

N. Insanity

169. (1) Where the court-martial finds either that the accused is unfit, by reason of insanity, to take his trial, or that he was guilty of the act or omission charged, but was insane at the time when he did the said act or made the said omission, the president shall date and sign the finding, and the proceedings, upon being signed by the judge-advocate, (if any), shall be at once transmitted for confirmation.

(2) If a finding under sub-section (1) is not confirmed, the accused may be tried by the same or another court-martial, for the offence with which he was originally charged.

(3) Where a finding under sub-section (1) is confirmed, until the instructions of the Minister as to the disposal of the accused are known, or until any earlier time at which the accused is fit to take his trial, the accused shall be confined in such a manner as to keep him in custody securely without unnecessary harshness.

O. Record of Proceedings

170. At a court-martial, the judge-advocate or, if there is none, the president shall record or cause to be recorded, all the transactions of that court and shall be responsible for the accuracy of the record and if the judge-advocate is called as a witness by the accused, the president shall be responsible for the accuracy of the record of the proceedings of the evidence of the judge-advocate.

171. The evidence shall be taken down in a narrative form in as nearly as possible the words used; but in any case where the prosecutor, the accused, the judge-advocate, or the court considers it material, the question and answer shall be taken down verbatim.

172. Where an objection has been taken to any question or to the admission of any evidence or to the procedure of the court-martial, such objection shall, if the prosecutor or accused so requests, or the court-martial thinks fit, be entered upon the proceedings together with the grounds of the objection, and the decision of the court-martial thereon.

173. Where any address by or on behalf of the prosecutor or accused, or the summing up of the judge-advocate, is not in writing, it shall not be necessary to record the address or summing up in the proceedings in a manner other than the court-martial thinks proper, or in the case of the summing up in a manner other than the judge-advocate requires, except that—

- (i) the court shall in every case make such record of the defence made by the accused as will enable the confirming authority to judge the defence made by or on behalf of the accused to each charge against him; and
- (ii) the court shall also record any particular matters in the address by or on behalf of the prosecutor or accused which the prosecutor or accused, as the case may be, requires.

174. The court shall not enter in the proceedings any comment, or anything not before the court, or any report of any fact not forming part of the trial, but if any such comment or report seems to the court necessary, the court may forward it to the proper military authority in a separate document, signed by the president.

175. The proceedings shall be deemed to be in the custody of the judge-advocate (if any), or, if there is none, of the president, but may, with proper precautions for their safety, be inspected by the members of the court, the prosecutor, and accused respectively, at all reasonable times before the court is closed to consider the finding.

176. As soon as may be after a court-martial has passed its sentence, it shall transmit its proceedings to the appropriate confirming authority.

177. The proceedings of a court-martial shall, after promulgation, be forwarded, as circumstances require, to Army Headquarters, and there preserved for not less, in the case of a general court-martial, than seven years, and in the case of any other court-martial, than three years.

178. (1) If, before confirmation, the original proceedings of a court-martial, or any part thereof, are lost, a copy thereof, if any, certified by the president or the judge-advocate may be accepted in lieu of the original.

(2) If there is no copy of the description specified in paragraph (1) and sufficient evidence of the charge, finding, sentence and transactions of the court-martial can be procured, that evidence may, with the assent of the accused, be accepted in lieu of the original proceedings or part thereof lost.

(3) If the accused refuses to give his assent to the submission of the evidence referred to in paragraph (2), he may be tried again, and the finding and sentence of the previous court of which the proceedings have been lost shall be null.

(4) If, after confirmation, the original proceedings of a court-martial or any part thereof are lost, and there is sufficient evidence of the charge, finding, sentence, and transactions of the court and of the confirmation of the finding and sentence, that evidence shall be valid and a sufficient record of the trial for all purposes.

179. The proceedings of a court-martial shall be substantially in the form specified in the Fifth Schedule hereto.

180. In these regulations, unless the context otherwise requires—

- “ Army Act ” means the Army Act, No. 17 of 1949;
- “ closed court ” means a sitting of a court-martial at which only its members, judge-advocate and officers under instruction are present;
- “ confirming authority ” means the appropriate confirming authority within the meaning of section 64 of the Army Act;
- “ convening officer ” means the officer convening the court-martial;
- “ court-martial ” means a general or district court-martial; and
- “ open arrest ” shall have the same meaning as in the Army Discipline Regulations, 1950.

181. These regulations may be cited as the Court-martial (General and District) Regulations.

Regulation 8 (2)

FIRST SCHEDULE

FORM OF ORDER FOR THE ASSEMBLY OF A GENERAL OR DISTRICT COURT-MARTIAL

ORDERS BY _____ commanding the
(Place, date.)

The officers mentioned below shall assemble at _____ on the _____ day of _____ for the purpose of trying by a court-martial the accused person (persons) named in the margin (and such other person or persons as may be brought before them)¹

PRESIDENT

is appointed president²

MEMBERS

WAITING MEMBERS

JUDGE-ADVOCATE

_____ has been (or where the convening officer has the appointment of a judge-advocate, is hereby) appointed judge-advocate.

The accused shall be warned and all witnesses duly required to attend.

The proceedings shall be forwarded to

Signed this _____ day of _____

Signature.

Note.—The President must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the unit to which they belong may alone be named.

¹ Any opinion of the convening officer with respect to the composition of the Court (see regulations 5 and 6) shall be added here, thus:

“ In the opinion of the convening officer, officers of different corps are not, having due regard to the exigencies of the service, available ” (or the other appropriate words).

² In the case of either a general of a district court martial, where an officer other than a field officer is appointed president, add below the following:—

“ In the opinion of the convening officer a field officer is not, having due regard to the exigencies of the service available ”. (see Army Act, sections 46 (4) and 50 (2)).

In the case of a district court-martial, where an officer below the rank of captain is appointed president, add below the following:—

“ In the opinion of the convening officer a captain is not, having due regard to the exigencies of the service, available ”.

SECOND SCHEDULE

Regulation 40 (1). FORM A

President and Members

I swear by Almighty God*/sincerely and truly declare and affirm that I shall well and truly try the accused (or accused persons) before this court-martial according to the evidence, and that I shall duly administer justice according to the Army Act and the regulations thereunder now in force, without partiality, favour or affection, and I do also swear*/affirm that, except so far as may be permitted by instructions of the

Commander of the Army for the purpose of communicating the sentence to the accused, I shall not divulge the sentence of the Court until it is duly confirmed, and I do further swear*/affirm that I shall not on any account at any time whatsoever disclose, or discover the vote or opinion of any particular member of this court-martial, unless required so to do by due course of law.

Regulation 47 (1) (a). FORM B

Judge-Advocate

I swear by Almighty God*/sincerely and truly declare and affirm that I shall not, unless it is necessary for the due discharge of my official duties, divulge the sentence of the court-martial until it is duly confirmed; and that I shall not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required so to do by due course of law.

Regulation 47 (1) (b). FORM C

Officer under Instruction

I swear by Almighty God*/sincerely and truly declare and affirm that I shall not divulge the sentence of this court-martial until it is duly confirmed; and that I shall not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court-martial, unless required in due course of law.

Regulation 47 (1) (c). FORM D

Witness

I swear by Almighty God*/sincerely and truly declare and affirm that the evidence which I shall give before this Court shall be the truth, the whole truth and nothing but the truth.

Regulation 47 (1) (d). FORM E

Shorthand Writer

I swear by Almighty God*/sincerely and truly declare and affirm that I shall truly take down to the best of my power the evidence to be given before this court-martial and such other matters as may be required, and shall, when required, deliver to that Court a true transcript of the same.

Regulation 47 (1) (e). FORM F

Interpreter

I swear by Almighty God*/sincerely and truly declare and affirm that I shall to the best of my ability truly interpret and translate, as I shall be required to do, touching the matters before this court-martial.

* Delete, what is inappropriate.

THIRD SCHEDULE

Regulation 82 (2).

To

Whereas a _____ court-martial has been ordered to assemble at _____ on the _____ day of _____ 19 _____, for the trial of _____ of the _____ regiment, I do hereby summon and require you _____ to attend, as a witness, the sitting of the said court at _____ on the _____ day of _____ at _____ o'clock (and to bring with you the documents hereinafter-mentioned, namely, _____) and so to attend from day to day until you shall be duly discharged.

Given under my hand at _____ on the _____ day of _____ 19 _____

(Signature)

Convening Officer (or Judge-Advocate or President of the Court).

FOURTH SCHEDULE

Regulation 135.

Offences (1)	Punishment		Remarks (4)
	Detention Period (2)	Imprisonment Period (3)	
(i) In the absence of a previous conviction or of aggravating circumstances or of antecedent circumstances appearing to require a severe lesson, or of an unusual prevalence in the unit or garrison of the species of offence forming the subject of the charge. For the following offences—	Not exceeding 28 days	—	An addition of from 7 to 28 days' detention may appropriately be made in the case of each previous conviction, whether for a similar or any other offence, or in the case of any circumstances that aggravate the gravity of the offence
(a) First desertion within first 6 months' service, and when not under orders for embarkation			
(b) Leaving guard or post			
(c) Offences by Sentries			
(d) Insubordinate or threatening language			
(e) Disobedience not of a grave nature			
(f) Resisting escort, not involving an attempt at serious injury			
(g) Breaking out of barracks			
(h) Neglect of orders			
(i) Absence			
(j) Failing to appear at parade			
(k) Being out of bounds			
(l) Drunkenness			
(m) Release of person or allowing person to escape (not wilfully)			
(n) Escaping from custody			
(o) Loss of kit			
(p) Irregularity or omission in regard to returns (not fraudulent)			
(q) Minor contempt of court-martial			
(r) False answer on attestation			
(s) Conduct prejudicial to military discipline or any other offence which a person can be guilty of under section 129 of the Army Act (such offences not being of a serious nature)			
(ii) (a) Striking a superior officer	Not exceeding 112 days	—	.. If the offence has been repeated, or attended with circumstances which adds to its gravity, the sentence should be proportionately increased
(b) Disobeying a lawful command (graver cases)			
(c) Desertion other than desertion of the description referred to in item (i)			
(d) Fraudulent enlistment			
(e) False evidence			
(f) False accusations			
(g) Conduct prejudicial to military discipline or any other offence which a person can be guilty of under section 129 of the Army Act (such offence not being of a serious nature and not falling within the category specified in item (i) (s))	Not exceeding 112 days	—	.. Offences of violence under section 99 of the Army Act in their gravest form, may justify a sentence of imprisonment. Offences under section 99 (1) of the Army Act should normally be punished more severely than those under section 99 (2)
(iii) Ordinary theft. Frauds	—	Not exceeding 112 days	If the offence has been repeated, or attended with circumstances which add to its gravity, a sentence of from 113 days to 6 months' imprisonment should suffice. If the offence has been repeated three or more times, a sentence of imprisonment for 1 year and upwards should suffice
(iv) An offence under section 121 of the Army Act	—	Not exceeding 6 months	A sentence of imprisonment should normally be awarded where the circumstances which gave rise to the previous discharge were particularly disgraceful or where the offence has been repeated. All relevant factors shall, however, be considered and, if the evidence discloses mitigating circumstances, due regard shall be given thereto. There is no legal obligation to impose a sentence of imprisonment if, in the opinion of the court-martial, a lesser punishment would meet the case
(v) Disgraceful conduct of a cruel, indecent or unnatural kind (see section 109 (e) of the Army Act)	—	Not exceeding 1 year	If the offence has been committed in circumstances which add to its gravity, the sentence should be proportionately increased up to the maximum of 3 years
(vi) Offences under sections 131 and 132 of the Army Act	—	According to the nature of offence and attendant circumstances	In awarding punishment for civil offences, the court shall be guided by exactly the same principles as those which guide them in punishing military offences

FIFTH SCHEDULE

Regulation 179.

** All printed matter not applicable to the particular Court being held shall be struck out and initialled by the President.

****Form of Proceedings for General and District Courts-Martial**

Form of Proceedings of a General Court-Martial (including some of the incidents which may occur to vary the ordinary course of procedure), with Instructions for the guidance of the Court.

[Note—The proper Army Forms, to be obtained from Convening Officers, shall be used in accordance with the instructions.

The same Form shall be used for district courts-martial, and shall apply as nearly as may be, with the substitution of "district" for "general", and with the omission, where there is no Judge-Advocate, of all reference to the Judge-Advocate.]

A.

PROCEEDINGS OF A GENERAL COURT-MARTIAL

held at _____ on the _____ day of _____
19 _____ by order of _____ Commanding
dated the _____ day of 19 _____

President

Rank.	Name.	Regiment.
_____	_____	_____

Members

Rank.	Name.	Regiment.
_____	_____	_____
_____	_____	_____

_____, Judge-Advocate.

Trial of

The order convening the Court, the charge-sheet, and the summary (or abstract) of evidence are laid before the Court.

[INSTRUCTION.—All documents relating to the Court, or the matters before it, which are intended to form part of the proceedings (such as an order respecting military exigencies, or a letter answering any question referred to the convening officer) at whatever period of the trial they are received shall be read in open Court, marked so as to identify them, signed by the president, and attached to the proceedings.]

The Court satisfies itself that _____ is not available to serve owing to † _____ ‡ Here insert reason. § Here insert Rank, Name and Regiment. _____ waiting member takes his place as a member of the Court.

The Court satisfies itself as provided by Regulations 18 and 19.

[Note—Before certifying that the Court has satisfied itself as provided by regulations 18 and 19, the President, shall in every case where a Court of Inquiry has been held respecting a matter upon which a charge against the accused is founded, insert an asterisk after the words "regulations 18 and 19" and enter in red ink and sign a footnote at the bottom of the first page of the proceedings, to the following effect:—

"I have satisfied myself that none of the officers detailed as members of this Court have previously served upon any Court of Inquiry respecting the matters-forming the subject of the charge (charges) before this court-martial."

" (Signature of President.) "

The accused is brought before the Court.

Prosecutor||
Counsel§ or defending officer||.

At _____ o'clock the trial commences.

The order convening the Court is read and is marked _____ signed by the president and attached to the proceedings.

The names of the president and members of the Court are read over in the hearing of the accused, and they severally answer to their names.

Do you object to be tried by me as president, or by any of the officers whose names you have heard read over?

No. (Yes—see variation below)

[INSTRUCTION.—The questions are to be numbered throughout consecutively in a single series. The letters Q and A, in the margin may stand for Question and Answer respectively]

VARIATION
CHALLENGING MEMBERS
(Regulation 39)

Answer.—I object to _____

Question to accused.—Do you object to any other person?

(This question must be repeated until all the objections are ascertained.)

Answer.—

(If the president is objected to, that objection shall be dealt with first, otherwise an objection to the most junior officer shall be disposed of first.)

Objection to the President

Question to accused.—What is your objection to me as president?

The accused, in support of his objection to the president, makes the following statement (set out) (and calls _____ who states) (set out)

The Court is closed to consider the objection.

Decision.—The Court disallows the objection.

The Court is re-opened, and the above decision is made known to the accused.

Decision.—The Court allows the objection.

The Court is re-opened, and the above decision is made known to the accused, and the Court adjourns.

Objection to Member

Question to accused.—What is your objection to (the junior officer objected to)?

The accused, in support of his objection to _____, makes the following statement (set out) (and calls _____ who states) (set out)

The Court is closed to consider the objection.

Decision.—The Court disallows the objection.

The Court is re-opened, and the above decision is made known to the accused,

or,

Decision.—The Court allows the objection.

The Court is re-opened, and the above decision is made known to the accused.

retires

Fresh Member.—|| _____ takes his place as a member of the Court.

(This only applies where there are waiting members of the Court, otherwise the Court must adjourn.)

He appears to the Court to be eligible and not disqualified to serve on this Court-martial.

Question to accused.—Do you object to be tried by (the fresh member)?

Accused—

(If he objects, the objection shall be dealt with in the same manner as the former objection.)

Question to accused.—What is your objection to (the next junior of the officers objected to)?

(This objection shall be dealt with in the same manner as the former objection.)

The Court adjourns for the purpose of fresh members being appointed,

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh members being appointed, because (here state the reasons).

At _____ o'clock on _____ the Court resumes its proceedings, and an Order appointing another president (or, fresh officers) is read, marked _____ and attached to the proceedings.

The Court satisfies itself with respect to such president (or members) as provided by regulation 18.

[INSTRUCTION.—The procedure as to challenging a new president and fresh officers, and the procedure, if any objection is allowed, shall be the same as above.]

† Here insert No., Rank, full name, Regiment, and appointment (if any).

‡ Here insert reason.
§ Here insert Rank, Name and Regiment.

|| Here state Rank and Name, and Regiment (if any).

¶ Qualification to be stated.

Question by the President to the accused.

Answer by accused.

|| Insert Rank, Name and Regiment.

The president and members of the Court, as constituted after the above proceedings, are as follows:—

PRESIDENT.		
Rank	Name	Regiment
_____	_____	_____
_____	_____	_____
_____	_____	_____

MEMBERS		
Rank	Name	Regiment
_____	_____	_____
_____	_____	_____
_____	_____	_____

B.

The President, Members, and Judge-Advocate are duly sworn.

The following officers under instruction are duly sworn.

[INSTRUCTIONS.—(1) *The witnesses if in Court, other than the prosecutor and the accused, shall be ordered out of the Court at this stage of the proceedings.*

(2) *Also any interpreter and shorthand writer should be now sworn.]*

Question to accused.

A.

Q.

A.

Do you object to _____ as interpreter?

Do you object to _____ as shorthand writer?

[INSTRUCTION.—*In case of objection the same procedure shall be followed as in the case of an objection to a member of the Court.*]

CHARGE-SHEET.

The charge-sheet is signed by the president, marked B² and annexed to the proceedings.

VARIATION

If the accused has elected to be tried instead of being dealt with summarily by his commanding officer, the prosecutor shall inform the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his commanding officer.

The accused shall be charged upon each charge in the above-mentioned charge-sheet.

Question to accused.

A.

Are you guilty or not guilty of the (first) charge against you; which you have heard read?

[INSTRUCTIONS (1).—*Where there is more than one charge upon which the accused is charged the foregoing question shall be asked after each charge (whether alternative or not) is read, the number of the charge being stated.*

(2) *If the accused pleads guilty to any charge, the provisions of regulation 59 must be complied with, and the fact that they have been complied with must be recorded. Where there are alternative charges and the accused pleads guilty to the less serious charge the Court, if it decides to proceed upon the more serious charge, shall enter after the plea as recorded: "The Court proceeds as though the accused had not pleaded guilty to any charge."*

VARIATIONS

OBJECTION TO CHARGE

(Regulation 54)

The accused objects to the charge, on the ground that (set out).

The Court is closed to consider its decision.

The Court disallows the objection (or, the Court allows the objection, and agrees to report to the convening authority).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceeds to the trial (or, adjourns).

AMENDMENT OF CHARGE

(Regulation 55)

The Court being satisfied that the name (or description) of the accused is _____ and not as stated in the charge-sheet amends the charge-sheet accordingly.

or

(Regulation 56)

The Court, before any witnesses are examined, considers that, in the interests of justice, the following addition to (or omission from or alteration in) the charge is required (set out), and adjourns to report its opinion to the convening authority.

PLEA TO THE JURISDICTION

(Regulation 57)

The accused pleads to the general jurisdiction of the Court on the ground that (set out).

Question to the accused. Do you wish to give evidence yourself or produce any evidence in support of your plea?

A.

Witness is examined on oath.

[INSTRUCTION.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused and of any witnesses called by the prosecutor in reply, shall proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor shall be entitled to reply after all the evidence is given.*]

The Court is closed to consider its decision.

The Court (a) overrules the plea and decides to proceed with the trial; or (b) allows the plea and decides to report to the convening authority, and adjourns; or (c) is in doubt as to the validity of the plea and decides to refer the matter to the convening authority and adjourns (or makes the following special decision (set out) and decides to proceed with the trial).

The Court is re-opened, and the above decision is made known to the accused.

The Court proceeds with the trial (or adjourns).

REFUSAL TO PLEAD

(Regulation 58)

As the accused does not plead intelligibly (or refuses to plead) to the above charge, the Court enters a plea of not guilty.

INSANITY

(Regulation 169)

The Court finds that the accused (No. _____ rank _____ name _____ regiment _____) is by reason of insanity unfit to take his trial.

Signed at _____ this _____ day of _____
(Judge-Advocate). (President.)

PLEA IN BAR OF TRIAL

(Regulation 62)

Accused, besides the plea of guilty (or, not guilty), offers a plea in bar of trial, on the following grounds, (set out).

Question to the accused. What are the grounds of your plea?

A.

Do you wish to give evidence yourself or to call any witnesses in support of your plea?

Witness is examined on oath.

[INSTRUCTION.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, shall proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor shall be entitled to reply after all the evidence is given.*]

The Court is closed to consider its decision.

The Court allows the plea and resolves to adjourn (or to proceed to the trial on another charge) (or the Court overrules the plea).

The Court is re-opened, and the above decision is made known to the accused.

The Court adjourns (or proceeds with the trial on another charge) (or proceeds with the trial).

The accused having pleaded guilty to the charge the provisions of regulation 59 are here complied with.

CC.

PROCEEDINGS ON PLEA OF GUILTY

*To be struck out in case no plea of "Not Guilty" has been proceeded with.

*(The Court having been re-opened, the accused is again brought before it, and the charge (charges) to which he has pleaded guilty is (are) read to him again.)

The accused (number rank name regiment) is found guilty of the charge (all the charges) or The accused (number, &c.) is found guilty of the charge, and is found not guilty of the charge.

[INSTRUCTION.—If the trial proceeds upon any charge to which there is a plea of not guilty, the Court shall not proceed upon the record of a plea of guilty until after the finding on that other charge; and in that case the Court shall be re-opened and the charge on which the record is guilty must be read to the accused again.

The accused may, in accordance with regulation 65 (1) make any statement he wishes in reference to the charge.]

The summary (or abstract) of evidence is read, marked signed by the president, and attached to the proceedings.

[INSTRUCTION.—If there is no summary or abstract of evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming authority to know all the circumstances connected with the case, shall be taken on a separate sheet as on a plea of not guilty.]

Question to accused. A.

Do you wish to make any statement in mitigation of punishment?

The accused in mitigation of punishment says (or if the statement is in writing, hands in a written statement, which is read, marked signed by the president, and attached to the proceedings).

[INSTRUCTION.—If the statement of the accused is not in writing, the material portions should be taken down in the first person, and as nearly as possible in his own words.

If counsel or defending officer addresses the court on behalf of the accused the material portions of his address should be recorded.

In any case any matter which is requested by or on behalf of the accused to be recorded shall be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in mitigation of punishment.]

VARIATIONS

ALTERATION OF PLEA

(Regulation 65 (2))

The Court being satisfied from the statement of the accused (or the summary of evidence, or otherwise), that the accused did not understand the effect of the plea of "guilty," enters at the foot of page "CC" of the proceedings: "The Court considers that the accused does not understand the effect of his plea of 'guilty,' alters the record, and enters a plea of 'not guilty'."

[INSTRUCTION.—The Court shall then proceed in respect of this charge as on a plea of not guilty.]

WITNESSES FOR DEFENCE ON PLEA OF GUILTY

(Regulation 65 (4))

The Court gives permission to the accused to give evidence himself and (or) to call witnesses to prove his above statement that (here specify the statement which is to be proved)

[INSTRUCTION.—The examination, &c., of witnesses called in pursuance of this permission shall proceed in the same manner as on a plea of not guilty.]

DD.

Do you wish to give evidence yourself or to call any witnesses as to character?

[INSTRUCTION.—The examination, &c., of witnesses as to character shall proceed as in the case of a witness giving evidence as to the facts of the case.]

C.

PROCEEDINGS ON PLEA OF NOT GUILTY

Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

[INSTRUCTION.—This question shall only be asked if the accused pleads "not guilty" to one or more of the charges. If accused desires to make an application for an adjournment, the court shall hear any statement or evidence which he may desire to adduce in support thereof, and any statement of the prosecutor or evidence in answer thereto. Such statement or evidence shall be recorded, together with the decision of the Court on a separate sheet of paper attached to the proceedings and signed by the president of the court.]

The prosecutor makes an opening address, [or hands in a written address, which is read, marked signed by the president, and attached to the proceedings.]

[INSTRUCTION.—Where the address of the prosecutor is not in writing, the Court shall record so much as appears to them material, and the record shall be attached to the proceedings.]

First witness for prosecution. *

The prosecutor proceeds to call witnesses. being duly sworn in is examined by the prosecutor.

*Here insert his number, rank, name, regiment, and appointment (if any), or other description.

Cross-examined by the accused (or by Counsel, or Defending Officer.)

Re-examined by the Prosecutor

Questioned by the Court

[INSTRUCTIONS.—(1) The fact that regulation 87 has been complied with must be recorded at the conclusion of the evidence of each witness.

(2) If the accused, or his counsel, or defending officer declines to cross-examine a witness that fact must be recorded.]

VARIATIONS

POSTPONEMENT OF CROSS-EXAMINATION

(Regulation 80)

The Court, at the request of the accused, allows the cross-examination of the witness to be postponed.

OBJECTION TO EVIDENCE OR PROCEDURE

(Regulation 32)

The accused, (or counsel, or defending officer or the prosecutor) objects to the following question on the ground that (set out).

The court is closed to consider its decision.

The Court overrules (or allows) the objection, and the Court is re-opened and the decision announced and the Court proceeds with the trial.

EXPLANATION OR CORRECTION OF EVIDENCE

(Regulation 87)

The witness, on his evidence being read to him, makes the following explanation or correction (set out)

Examined by the prosecutor as to the above explanation or alteration.

Examined by (or on behalf of) the accused as to the above explanation or alteration.

The prosecutor and the accused (or counsel or defending officer) decline to examine him respecting the above explanation or correction.

Second witness for prosecution.

being duly sworn is examined by the prosecutor.

(The examination, &c., of this and every other witness proceeds as in the case of the first witness)

VARIATIONS

EXTENDED SITTING OF COURT

(Regulation 21 (2))

The Court thinks it expedient to continue to sit after seven o'clock in the evening on the ground that (set out)

ADJOURNMENT

At o'clock the Court adjourns until o'clock on the

On the of 19, at o'clock, the Court reassembles, pursuant to adjournment; present the same members as on the of

[INSTRUCTIONS —(1) If upon reassembly a member is absent, and his absence will reduce the Court below the legal minimum, and it appears to the members present that the absent member cannot attend within a reasonable time, the president or senior member present will thereupon report the case to the convening officer.

(2) If either the president or the Judge-Advocate is absent, and cannot attend within a reasonable time, the Court shall adjourn, and the president or senior member present, shall thereupon report the case to the convening authority. (See regulation 24)]

ABSENCE OF PRESIDENT OR MEMBER

(Rank—Name—Regiment) being absent.

A medical certificate (or letter, or as the case may be) is produced, read, marked and attached to the proceedings

The Court adjourns until

or,

There being present (not less than the legal minimum) members, the trial is proceeded with.

An order bearing date, appointing (the senior member) president of the Court-martial in the place of, is read, marked, signed by the president, and attached to the proceedings.

The trial is proceeded with

Examination (cross-examination) of continued.

D

The prosecution is closed

DEFENCE

Do you apply to give evidence yourself as a witness?

Question to accused.

A.
Q.

Do you intend to call any other witness in your defence?

A.
Q.

Is he a witness as to character only?

INSTRUCTIONS TO THE COURT

(i) When the answers to the above questions have been recorded, the Court shall follow the appropriate provisions of regulations 71 to 75 respecting the order of evidence and addresses

(ii) All addresses by prosecutor, counsel, or defending officer, whether recorded by the Court or handed in in writing, shall be attached to the proceedings in the order in

which they are made Any address which the accused is entitled to make pursuant to regulations 72 (d), 74 (a) and 74 (c) will be similarly dealt with Written addresses will be read to the Court, marked and signed by the President.

(Where any evidence is given for the defence)

The evidence of the accused (and of the witnesses for the defence, including witnesses as to character) is recorded on a separate page.

First witness for the defence.

[INSTRUCTION —All evidence given upon oath will be recorded in the following form:—]

*Here insert his number, rank, name, regiment, and appointment (if any), or other description.

The accused* being duly sworn states (or being examined by counsel or defending officer states.)

Cross-examined by the Prosecutor

Questioned by the Court

[INSTRUCTIONS —(1) The fact that regulation 87 has been complied with should be recorded

(2) If the prosecutor declines to cross-examine, that fact must be recorded.]

VARIATION

ADJOURNMENT TO PREPARE DEFENCE

The Court at the request of the accused (or counsel or defending officer) adjourns until in order to enable him to prepare his defence

Second witness for the defence.

being duly sworn is examined by the accused (or counsel or defending officer).

Cross-examined by the Prosecutor

Re-examined

Questioned by the Court

[INSTRUCTIONS —(1) The fact that regulation 87 has been complied with should be recorded.

(2) If the prosecutor declines to cross-examine, that fact must be recorded

(3) The evidence of witnesses to character shall be taken in the same manner as that of witnesses to the facts.]

(Where the accused does not give evidence upon oath.)

Question to the accused.

Have you anything to say in your defence?

A.

The accused in his defence says (see Instruction (1) below) (or hands in a written address, which is read, marked, signed by the president, and attached to the proceedings)

[INSTRUCTIONS —(1). In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see INSTRUCTIONS TO THE COURT above)

(2) If the statement of the accused is not in writing, and is delivered by himself, the material portions should be taken down in the first person and as nearly as possible in his own words

Any matter which is requested by or on behalf of the accused to be recorded should be recorded, and care must be taken, whether a request is made or not, to record every point brought forward in the defence or in mitigation of punishment.]

VARIATIONS

RECALLING WITNESSES

(Regulations 91 and 92)

(1) At the request of the prosecutor (or of the accused) is recalled and examined on his former oath through the President (or Judge-Advocate) and states as follows (set out),

or,

(2) The prosecutor with leave of the Court calls (or recalls) for the purpose of rebutting a material statement made by a witness for the defence The witness being duly sworn (or on his former oath) being examined by the prosecutor states as follows (set out with any cross-examination, re-examination, &c)

or,

(3) The prosecutor calls (or recalls) in reply to the witness(es) as to character called by the accused The witness being duly sworn (or on his former oath), and being examined by the prosecutor states as follows (set out with any cross-examination, re-examination, &c).

or,

(4) The Court in accordance with regulation 92 (2) calls (or recalls) who being duly sworn (or on his former oath) states in reply to the President (or Judge-Advocate) as follows (set out)

[INSTRUCTION—In cases (1), (2) and (3), witnesses must be called or recalled before the closing address of or on behalf of the accused. In case (4) witnesses may be called by the Court at any time before the finding, in this case the accused or counsel or defending officer should be given the opportunity of asking further questions through the Court]

ADJOURNMENT TO PREPARE ADDRESSES, &c.

The Court, at the request of the accused, adjourns until to enable the accused to prepare his address

The Court, at the request of the prosecutor, adjourns until to enable the prosecutor to prepare his reply.

The Court, at the request of the Judge-Advocate, adjourns until to enable him to prepare his summing up.

SUMMING UP

The Judge-Advocate makes the following summing up (or, if the summing up is in writing, hands in a written summing up, which is read, marked, signed by the President, and attached to the proceedings);

or,

The Judge-Advocate and the Court think a summing up unnecessary.

E

*FINDING

The Court is closed for the consideration of the finding

The Court finds that the accused (number, rank, name, regiment),

(1) Acquittal on all Charges

is not guilty of the charge (or, all the charges) (and honourably acquit him of the same)

The finding(s) is (are) read in open Court and the accused is released.

Signed at , this day of 19 .

(Judge-Advocate) (President).

(2) Acquittal on some but not all Charges

is not guilty of the charge(s) (and) honourably acquit him of the same), but is guilty of the charge(s).

The finding(s) of "not guilty" is (are) read in open Court.

(3) Conviction on all Charges

is guilty of the charge (or, all the charges).

(4) Special Findings

(a) is guilty of the charge (s) and guilty of the charges with the exception of the words (set out) (or, with the exception that (set out))

or,

(b) is not guilty of desertion but is guilty of absence without leave.

[INSTRUCTION.—Any special finding permitted by regulation 114 shall be framed as far as possible in accordance with (a)]

(5) Reference to confirming authority

(Regulation 113)

The Court finds as regards the charge that the accused did (set out the facts which the Court finds to be proved), but doubts whether the facts proved show the accused to be guilty or not of the offence charged [or of the offence of (any offence of which the accused might under the Army Act legally be found guilty on the charge as laid)] It therefore refers to the confirming authority for an opinion and adjourns

or,

(Regulation 116)

[Note.—This applies only to alternative charges]

The Court finds that the accused did (set out such particulars of the charge as the Court finds to be proved), but doubts whether such facts constitute in law the offence stated in the charge or in the charge It therefore refers to the confirming authority for an opinion and adjourns.

(In either case)

The Court re-assembles on the day of 19 . The opinion of the confirming authority is read, marked, signed by the president and attached to the proceedings

The Court now finds that the accused (number—rank—name—regiment) is (the findings to be recorded in the usual manner)

(6) Insanity

(Regulation 169)

The Court finds that the accused (number—rank—name—regiment) did the act (or made the omission) which forms the subject of the charge(s) but was insane at the time when he did (or made) the same.

*To be struck out except in cases where trial has taken place on a plea of "not guilty"

PROCEEDINGS ON CONVICTION

Before Sentence

*When the Court is already open this sentence will be struck out.

*The Court being re-opened the accused is again brought before it.

(Rank—Name—Regiment) is duly sworn.

Question by the President.

Have you any evidence to produce as to the character and particulars of service of the accused?

A. I produce this statement.

The witness hands in the statement, which should be in the following form:

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED

Number—Rank—Name—Regiment

(or as the case may be).

(1) The following is a fair and true summary of the entries in the regimental and squadron, battery, or company conduct sheets of the accused, exclusive of convictions by a court-martial or a civil court, of summary awards under the Army Act, and of cases in which trial has been dispensed with:—

	Within last 12 months.	Since Enlistment
For	times	times.
For	times	times.
Number of instances of gallantry or distinguished conduct,		

or,

There are no entries in the conduct sheets of the accused.

[INSTRUCTION—If the charge is for drunkenness, the entries for drunkenness must be stated separately and dated.]

(2) The accused has not been previously convicted,

or,

Previous convictions of the accused by a court-martial or a civil court, summary awards under the Army Act, and dispensations with trial, are set out in the Schedule annexed to this statement.

(3) The accused is not under sentence at the present time,

or,

The accused at the present time is under sentence for _____ beginning on the _____ day of _____

(4) The accused has been in confinement, awaiting trial on the present charges, for _____ days in civil custody, and _____ days in Military custody, making a total of _____ days in custody, of which _____ days were spent in hospital.

(5) The present age of the accused record of service _____

according to his _____ is _____ attestation paper _____

(6) The date of his _____ commission _____ specified _____ attestation _____

in his _____ record of service _____

_____ is _____ attestation paper _____

(7) The service which the accused is allowed to reckon towards discharge or transfer to the reserve is _____

(8) The accused is entitled to deferred pay or gratuity in respect of _____ service.

(9) The accused is entitled to reckon service for the purpose of determining his pension, &c.

(10) The accused is in possession of or entitled to no military decoration or military reward (or is in possession of or entitled to (state any military decoration or reward)).

(11) (If the accused is a warrant officer.) The accused before he was made a warrant officer last held the regimental rank of _____

(12) (In the case of an officer.) The accused holds in the army the rank of _____ dated _____ and in his regiment (or corps or department) the rank of _____ dated _____

(13) The accused has served as a non-commissioned officer continuously, without reduction, to the present date:—

Date of promotion.

In the rank of _____ years.

In the rank of _____ years.

In the rank of _____ years.

[INSTRUCTION.—If any matter in any of the above paragraphs cannot be stated from the regimental books, the paragraph must be struck through.]

SCHEDULE

Of convictions by a court-martial or civil court, of summary awards under the Army Act, and of cases in which trial has been dispensed with of accused, No. _____

Rank _____ Name _____ of regiment (or as the case may be.)

[INSTRUCTION.—A verbatim extract from the regimental books stating these convictions and dispensations with trial must be inserted.]

I hereby certify that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this _____ day of _____ A.B.

The above statement (with the Schedule of convictions and of cases in which trial has been dispensed with) is read, marked _____, signed by the President and annexed to the proceedings.

Question by the President. Is the accused the person named in the statement which you have heard read?

Answer by the witness. _____

Q. Have you compared the contents of the above statement with the regimental books?

A. _____

Q. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A. _____

Cross-examined by the Accused (or by Counsel, or Defending Officer).

_____ Re-examined _____

or, _____

The accused declines to cross-examine this witness.

[INSTRUCTIONS.—(1) If any evidence, other than documentary, is given the fact that regulation 87 has been complied with shall be recorded.

(2) Any further question shall be put and any evidence produced which the Court requires as to any point respecting _____

the character and service of the accused on which the Court desires to have information for the purpose of its sentence.

(3) At the request of the accused, or by the direction of the Court, the regimental books, or a certified copy of the material entries therein, must be produced for the purpose of comparison with the statement.

The accused is entitled to call the attention of the Court to any entries in the regimental books, or in the certified copy above mentioned, and to show that they are inconsistent with the statement.

When all the evidence on the above matters has been given, the accused may address the Court thereon, and in mitigation of Punishment.

(4) If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment, in addition to that to be awarded by the Court, the prosecutor must call the attention of the Court to the fact, and the Court must enquire into the nature and amount of that additional punishment.]

Question to the accused. Do you wish to address the Court?
Answer.

The Court is closed for the consideration of the sentence.

F.

SENTENCE.

[INSTRUCTION.—The provisions of section 133 of the Army Act must be carefully attended to by the Court in passing sentence.]

Sentence. The Court sentence the accused (No.—Rank—Name—Regiment.)

[INSTRUCTION.—The sentence is to be marginally noted in every case.]

In the case of an officer:—

Death. (a) to suffer death by being shot (hanged).

R.I. for (b) to undergo rigorous imprisonment for the term of years (or for life).

Simple Imprisonment for (c) to simple imprisonment for

[INSTRUCTION.—(1) As to the term of imprisonment, see below in the case of a soldier.

(2) A sentence of cashiering should precede a sentence of imprisonment].

Cashiered. (d) to be cashiered.

Dismissed. (e) to be dismissed from His Majesty's service.

Forfeiture of seniority of rank. (f) (Where the officer's army rank is superior to his regimental rank.) to take rank and precedence as in his corps as if his appointment to that corps bore date the day of , and to take rank and precedence in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared (a specified number of) places lower in the list of his corps, and in the rank held by him in the Army as if his name had appeared (a specified number of) places lower in the list of the Army.

[Or, where the officer's army and regimental rank are the same.]

to take rank and precedence in his corps and in the Army as if his appointment as bore date the day of

or,

to take precedence in the rank held by him in his corps as if his name had appeared (a specified number of) places lower in the list of his corps and in the rank held by him in the Army as if his name had appeared (a specified number of) places lower in the list of the Army.

[Or, where the officer has no regimental rank.]

to take rank and precedence in the Army as if his appointment as in the Army bore date the day of

or,

to take precedence in the rank held by him, as if his name had appeared (a specified number of) places lower in the list of the Army.

[INSTRUCTION.—In each case the form may be varied so that the Court may exercise the power under section 133 (1) (f) of the Army Act and regulation 119 of sentencing to forfeiture of seniority either in the corps, or in the Army, or in both.]

(g) to forfeit service for the purpose of promotion.

[INSTRUCTION.—This applies only in the case of an officer whose promotion depends upon length of service, and a sentence can be inflicted in respect of all or any part of his service.]

(h) to be reprimanded (or severely reprimanded)

(i) to be put under stoppages of pay until he has made good the sum of in respect of or (and) until he has made good the value of the following articles, viz., 1 value 1

value &c.

In the case of a soldier:—

Death (k) to suffer death by being shot (hanged)

R.I. for (l) to undergo rigorous imprisonment for the term of years (or for life).

Simple Impt. for (m) to simple imprisonment for

Detention for (n) to undergo detention for

Field punishment for. (o) to suffer field punishment for

[INSTRUCTIONS.—(1) If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.

(2) In the case of a non-commissioned officer, a sentence of reduction to the ranks shall precede a sentence of rigorous imprisonment, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.

Where, for any reason, a court considers that a sentence of reduction to a lower rank in the case of a non-commissioned

officer would be too severe a sentence, it can sentence the offender to forfeiture of seniority of rank.]

Discharged with ignominy. (p) to be discharged with ignominy from His Majesty's service.

Dismissed. (q) (if belonging to the Volunteer Force) to be dismissed from His Majesty's service.

Forfeiture of seniority, and reduction. (r) (if a non-commissioned officer)—
 (1) to take rank and precedence as if his appointment to the rank of bore date ; or

(2) to be reduced to the rank of serjeant; or

(3) to be reduced to the rank of corporal; or

(4) to be reduced to the rank of bombardier, or

(5) to be reduced to (a lower grade) or to be reduced to the ranks; or,

(6) to be reprimanded or severely reprimanded.

Fined Rs cts (s) to be fined

Stoppages. (t) to be put under stoppages of pay until he has made good the sum of in respect of or (and) until he has made good the value of the following articles, viz , value , &c value

Forfeiture of pay. (u) to forfeit all ordinary pay for a period of

(v) to forfeit (state number or all) good conduct-badge (or badges) with the pay attached thereto.

to forfeit deferred pay in respect of (all or calendar months or years) previous service

to forfeit (all or years, or calendar months) past service for the purpose of determining pension

[INSTRUCTIONS.—(1) An offender may be sentenced to all or any of the above forfeitures.

(2) In the case of a warrant officer, a district court-martial must use one of the following forms either in lieu of, or in addition to, such of the foregoing forms as relate to forfeitures, fines and stoppages; a general court-martial may use them in lieu of, or in addition to, the foregoing forms

(x) to be dismissed from the service, or,

(y) To be reduced in the list of his rank as if his appointment thereto bore date the day of or,

To be reduced to an inferior class of warrant officer; that is to say, to or,

(z) To be reduced to (a lower grade); or,

(zz) (If he was originally enlisted as a soldier, but not otherwise). To be reduced to the ranks, or,

(zzz) To be reprimanded or severely reprimanded

RECOMMENDATION OF MERCY

The Court recommends the accused to mercy on the ground that (set out)

The Court recommends that of the service forfeited under section 15 of the Army Act shall be restored on the ground that (set out)

SIGNATURE

Signed at , this day of 19

(Signature) (Signature) Judge-Advocate. President.

REVISION

Revision.

At , on the day of at o'clock, the Court re-assembles by order of for the purpose of re-considering their

Present, the same members as on the [INSTRUCTION.—If a member is absent and the absence will reduce the Court below the required minimum, or if he is the president, and it appears to the members present that such absent member cannot attend within a reasonable time, the president, or, in his absence, the senior member present, shall thereupon report the case to the convening officer.]

The letter (order or memorandum) directing the re-assembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding (finding and sentence) (or sentence) is read, marked , signed by the president, and attached to the proceedings

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings:

(a) do now revoke their finding and sentence, and find and sentence the accused to or,

(b) do now revoke their sentence, and now sentence the accused, &c., or,

(c) do now respectfully adhere to their sentence (or finding and sentence)

Signed at , this day of 19

Judge-Advocate. President.

CONFIRMATION

Confirmed,

or, I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied,

or, I confirm the finding and sentence of the Court, but mitigate (remit, or, commute)

or, (Where the confirming officer desires partly to reserve his confirmation.)

I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence;

or, I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority,

or, I confirm the findings of the Court and the sentence of the Court as to

and reserve the sentence so far as
it for
confirmation by superior authority;

or,

(Where the finding is not confirmed,)

Not confirmed *(the reasons for non-confirmation may be stated).*

or

(Where a plea in bar of trial had been offered under regulation 62)

The finding of the Court that the plea in bar of trial is proved (or not proved) is confirmed (or not confirmed),

or,

(Where the Court finds that the accused is unfit by reasons of insanity to take his trial or that he was insane at the time when he did the act or made the omission charged against him.)

Confirmed (or not confirmed).

Signed at _____, this _____ day of
19 _____

(Signature of Confirming
Authority)

[INSTRUCTION — Any remarks of the confirming authority should be separate from and form no part of the proceedings. The confirming authority shall in no case comment upon a finding of "not guilty", or upon the inadequacy of the sentence].

PROMULGATION

Promulgated and extracts taken at
, this _____ day of _____ 19 . .

(Signature of officer in charge
of documents).

[INSTRUCTION — Proceedings which are not confirmed must be promulgated.]