A MANUAL
FOR
COURTS-MARTIAL
AND OF
PROCEDURE UNDER MILITARY LAW

1898

2nd Ed. July 11, 1898

JUDGE ADV. GEN'LS. OFFICE

Army Library
Law Branch
JAG Section

F-6-d

RETURN TO

JUDGE-ADVOCATE-GENERAL'S OFFICE,

ARMY
~~WAR~~ DEPARTMENT.

A MANUAL

FOR

COURTS-MARTIAL,

AND OF

PROCEDURE UNDER MILITARY LAW.

Revised in the Judge-Advocate-General's Office, and published by authority of the Secretary of War,

FOR USE IN THE ARMY OF THE UNITED STATES.

SECOND EDITION, 1898.

WASHINGTON:
GOVERNMENT PRINTING OFFICE.
1898.

WAR DEPARTMENT,
Document No. 77.
Office of the Judge-Advocate-General.

ABBREVIATIONS.

A. R.—United States Army Regulations of 1895.
A. W.—Articles of War.
R. S.—Revised Statutes.

7106

JUDGE ADVT. GEN'LS. OFFICE.

WAR DEPARTMENT,

Washington, July 11, 1898.

The Manual for Courts-Martial and of Procedure under Military Law, prepared by direction of the Secretary of War for use in the Army of the United States, is approved and will be published for the information and guidance of all concerned.

R. A. ALGER,

Secretary of War.

WAR DEPARTMENT,
Document No. 77.
Office of the Judge-Advocate-General.

ABBREVIATIONS.

A. R.—United States Army Regulations of 1895.
A. W.—Articles of War.
R. S.—Revised Statutes.

7106

JUDGE ADVT. GENL'S. OFFICE.

WAR DEPARTMENT,

Washington, July 11, 1898.

The Manual for Courts-Martial and of Procedure under Military Law, prepared by direction of the Secretary of War for use in the Army of the United States, is approved and will be published for the information and guidance of all concerned.

R. A. ALGER,

Secretary of War.

A MANUAL FOR COURTS-MARTIAL, AND OF PROCEDURE UNDER MILITARY LAW.

INTRODUCTION.

MILITARY JURISDICTION.

Sec. I. MILITARY JURISDICTION is of four kinds:

1. **Military Law**; which is the legal system that regulates the government of the military establishment. It is a branch of the municipal law, and in the United States derives its existence from special constitutional grants of power.

2. **The Law of Hostile Occupation** (Military Government); that is, military power exercised by a belligerent by virtue of his occupation of an enemy's territory, over such territory and its inhabitants. This belongs to the Law of War and therefore to the Law of Nations.

3. **Martial Law at Home** (or, as a domestic fact); by which is meant, military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subject to it.

4. **Martial Law applied to the Army**; that is, military power extended in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency and not falling within the domain of military law, nor otherwise regulated by law.

The last two divisions are applications of the doctrine of Necessity to a condition of war. They spring from the right of national self-preservation.

Sec. II. THE SOURCE OF MILITARY JURISDICTION is the Constitution; the *specific provisions* relating to it being found in the powers granted to Congress, in the authority vested in the President, and in a provision of the Vth Amendment.

2. **Military Law** is derived from both *Written* and *Unwritten Sources.*

The *Written Sources* are the Articles of War, adopted as a part of the Revised Statutes of the United States in 1874 and since amended in some particulars; other statutory enactments relating to the military service; the Army Regulations; and General and Special Orders, and decisions promulgated by the War Department and by department, post, and other commanders.

The *Unwritten Source* is the "custom of war," consisting of the customs of the service both in peace and in war.

Sec. III. MILITARY TRIBUNALS are of three kinds, viz:

1. **Courts-Martial** (including summary courts), for the trial of offenders against military law.

2. **Courts of Inquiry**, for examining transactions of, or accusations or imputations against, officers or soldiers.

3. **Military Commissions**, for the trial of offenders against the laws of war and under martial law founded in necessity.

ARREST AND CONFINEMENT BEFORE TRIAL.[1]

Sec. I. ARREST OF OFFICERS. "Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer."[2]

2. "Commanding officers only have power to place officers in arrest, except as provided in the 24th Article of War. An arrest may be ordered by the commanding officer, in person or through his staff officer, orally or in writing."[3]

---

[1] Omission of arrest does not affect the jurisdiction of a court.

[2] 65th A. W.

[3] Par. 897, A. R.

3. "An officer arrested will repair at once to his tent or quarters and there remain until more extended limits have been granted by the commanding officer, on written application. Close confinement will not be enforced except in cases of a serious nature."[1]

4. "An officer in arrest will not wear a sword nor visit officially his commanding or other superior officer, unless directed to do so. His applications and requests of every nature will be made in writing."[2]

5. "Officers will not be placed in arrest for light offenses. For these the censure of the commanding officer will generally answer the purpose of discipline. Whenever a commanding officer places an officer in arrest and releases him without preferring charges, he will make a written report of his action to the department commander, stating the cause. The department commander, if he thinks the occasion requires, will call on the officer arrested for any explanation he may desire to make, and take such other action as he may think necessary, forwarding the papers to the Adjutant General of the Army for file with the officer's record, or for further action."[3]

6. "A medical officer, charged with the commission of an offense, need not be placed in arrest until the court-martial for his trial convenes if the service would be inconvenienced thereby, unless the charge is of a flagrant character."[4]

7. "When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers

---

[1] Par. 898, A. R.
[2] Ib., 901.
[3] Ib., 899.
[4] Ib., 900.

released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest."[1]

Sec. II. ARREST AND CONFINEMENT OF SOLDIERS.

1. Noncommissioned officers against whom charges may be preferred for trial will be placed in arrest in their barracks or quarters. They will not be confined in the guardhouse in company with privates, except in aggravated cases or when escape is feared.[2]

2. Noncommissioned officers *in arrest* will not be required to perform any duty in which they may be called upon to exercise command. Noncommissioned officers *in confinement* will not be sent out to work with prisoners under sentence.

3. Privates against whom charges may be preferred for trial by summary court will not be confined in the guardhouse, but will be placed in arrest in quarters, before and during trial and while awaiting sentence, except when in particular cases restraint may be necessary.[3]

4. Privates against whom charges may be preferred for trial by general court-martial will be confined in the guardhouse before and during trial. While awaiting trial and sentence, or undergoing sentence, they will, if practicable, be kept apart from privates confined for minor offenses or by sentence of an inferior court.[4]

5. Privates in confinement awaiting trial will not be sent to work with prisoners undergoing sentence if it can be avoided; but may, in the discretion of the commanding officer, be required to attend drills or be sent to work during the usual working hours under charge of a special sentinel.[4]

6. Privates *in arrest* may, in the discretion of the commanding officer, be required to attend parades, inspec-

---

[1] 71st A. W.

[2] Pars. 904 and 936, A. R. As to placing soldiers in irons, see page 60, par. 3, *infra*.

[3] Par. 936, A. R.

[4] Ib., 907.

tions, drills, school, or other military duties and to assist in policing in and around their barracks.

7. Except as provided in the 24th Article of War, or when restraint is necessary, no soldier will be confined without the order of an officer, who shall previously inquire into his offense. Confinement without trial as a punishment for an offense is forbidden. An officer authorizing the arrest or confinement of a soldier will, as soon as practicable, report the fact to his company or detachment commander.[1]

Sec. III. General Provisions Relating to the Arrest of Officers and Soldiers.

1. "No * * * officer commanding a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner."[2] "Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing,[3] to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him."[4]

2. "All persons under guard without written charges will be released by the old officer of the day at guard mounting, unless specific orders to the contrary have been given in each case by the commanding officer."[5] No officer or soldier put in arrest or confinement will be so restrained more than eight days, or until such time as a court-martial can be assembled.[6]

---

[1] Ib., 905 and 906.

[2] 67th A. W.

[3] This report is usually written in the "Guard Report Book," and presented to the commanding officer by the old officer of the day at guard mounting.

[4] 68th A. W.

[5] Par. 908, A. R.

[6] 70th A. W.

COURTS-MARTIAL.

COMPOSITION.

1 COURTS-MARTIAL are composed of commissioned officers only. All officers of the Regular Army, except those on the retired list[1] and professors of the U. S. Military Academy, are eligible for detail for the trial of offenders belonging to the Regular Army;[2] but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided.[3]

2. Officers of the Regular Army and of the Marine Corps, detached for service with the Army by order of the President, may be associated together for the trial of offenders belonging to either of these bodies.[4] In like manner regular officers may be associated with volunteer officers for the trial of regulars or volunteers. But with these exceptions officers of the Regular Army are not competent to sit on courts for the trial of offenders belonging to other forces.[5]

3. Officers of volunteers and of the militia, when the latter are called into the service of the United States, are competent to act as members of courts for the trial of regular officers or soldiers. Militia officers are also competent to sit upon courts for the trial of volunteers. But courts-martial for the trial of militia must be composed of militia officers only.[6]

---

[1] Sec. 1259, R. S.

[2] An "acting assistant surgeon," being a civilian, is not eligible, and chaplains are not in practice detailed as members of general courts-martial.

[3] 79th A. W.

[4] 78th A. W.

[5] 77th A. W.

[6] Sec. 1658, R. S.

4. In the U. S. military service, the following-named courts-martial are authorized: 1st, the "**General Court-martial**;" 2d, the "**Summary Court**;" 3d, the "**Garrison Court-martial**;" 4th, the "**Regimental Court-martial.**'

5. **The General Court-martial**, being the most important, will be first considered—the others, ordinarily called "**Inferior Courts-martial**," in the order named. But, as all courts-martial have much in common in regard to their jurisdiction, procedure, punishment, etc., the text may, as a rule, be regarded as apposite to all, unless the general court is specially mentioned. Exceptions in regard to jurisdiction, etc., will be made as each inferior court is considered.

6. **A General Court-martial** may consist of any number of members from five to thirteen, inclusive, and a judge-advocate; but of not less than thirteen members when this number can be convened without manifest injury to the service.[1] When, in the course of a trial, the court is reduced in number by reason of absence, challenge, or the relieving of members, it may proceed with business so long as *five* members remain. When from any cause a general court is reduced below the minimum, five, the remaining members should direct the judge-advocate to report the fact to the convening authority, and await further orders. In such a case, if the trial has not been entered upon, new members may be added; but if any testimony has been taken, the court should preferably be dissolved and a new one ordered.[2]

CONSTITUTION.

1. The President is empowered to institute general courts-martial—1st, as Commander in chief of the Army, under the Constitution; 2d, in the special contingency mentioned in the next paragraph; 3d, in the particular cases provided for by section 1230, Revised Statutes.

---

[1] 75th A. W. "A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive." (Par. 917, A. R.)

[2] For form of order for general court, see page 109, *infra*.

2. Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department, may appoint a general court-martial whenever necessary.[1] But when any such commander is the accuser or prosecutor of any *officer* under his command the court must be appointed by the *President*.[2] In time of war this power is extended to the commander of a tactical division or of a separate brigade; but in this case when such commander is the accuser of any *person* under his command the court must be appointed by the *next higher commander*.[3]

3. The Superintendent of the U. S. Military Academy has power to convene general courts-martial for the trial of cadets, subject to the same limitations and conditions now existing as to other courts-martial.[4]

4. The officer who appoints a court-martial—general, garrison, or regimental—may dissolve it, and control its existence, but not the subject-matter of its deliberations. In the absence of special orders or legislation to that effect, personal presence within the territorial limits of his department is not essential to the validity of commands given by a department commander to be executed within such limits, such, for instance, as the appointment of a court-martial.

JURISDICTION.

Sec. I. Courts-martial derive their existence solely from acts of Congress, and their jurisdiction is limited to the purpose of the maintenance of military discipline. Their decisions, within their jurisdiction, are not reviewable by any courts whatever.[5] The 30th Article of War relates to an exceptional procedure, not necessary to consider in this connection.

---

[1] See par. 4, this article.

[2] 72d A. W. As to when a commander is "the accuser or prosecutor," see Digest, Opin. J. A. G., p. 32.

[3] 73d A. W.

[4] Sec. 1326, R. S.

[5] See authorities cited in note 1, page 313, Digest, Opin. J. A. G.

2. Courts-martial have exclusive jurisdiction to try for acts constituting military offenses only, and also jurisdiction to try for acts which, besides constituting military offenses, are civil crimes. In the latter case the military ordinarily gives precedence to the civil court, but when an officer or a soldier has been arraigned before a duly constituted court-martial for an offense triable by it, the jurisdiction thus attached can not be set aside by the process of a State court.[1]

3. *As regards persons,* courts-martial have jurisdiction, at all times and in all places, over officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States,[2] over officers and soldiers of the marines, when detached for service with the Army,[3] over persons who fraudulently enlist in the service of the United States and receive pay or allowance thereunder,[4] and over offenders, in general, to whom, owing to the commission of a crime, military jurisdiction has legally attached—as by an arrest or confinement—before their discharge from service. This jurisdiction over persons in the military service covers all military offenses committed by them, whether within or beyond the territorial jurisdiction of the United States. Military offenses are not territorial.

4. As a rule, military jurisdiction ends when a soldier is discharged. The present exceptions to this rule are, discharged officers and soldiers guilty of frauds against the United States under the 60th Article of War, and discharged officers granted trial after summary dismissal, under section 1230, Revised Statutes, and general prisoners.[5]

---

[1] See authorities cited in note 1, page 329, Digest, Opin. J. A. G.

[2] 64th A. W. This includes retired officers and soldiers.

[3] Sec. 1621, R. S.

[4] Act of July 27, 1892; see G. O. 57, A. G. O., 1892. *A fraudulent enlistment* is an enlistment procured by means of a willful misrepresentation in regard to a qualification or disqualification for enlistment, or by intentional concealment of a disqualification, which has had the effect of causing the enlistment of a man not qualified to be a soldier, and who but for such false representation or concealment would have been rejected.

[5] Act approved June 18, 1898, page 99, *infra.*

5. *In time of war* this jurisdiction extends to "all retainers to the camp and all persons serving with the armies of the United States in the field, though not enlisted soldiers;"[1] to any person who "relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy;"[2] or who "holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly;"[3] and to spies.[4]

6. *As regards offenses,* the jurisdiction embraces, the offenses specifically defined in the Articles of War, or included under the general terms of the 61st and 62d articles; the offense of military persons trading with the enemy,[5] and that of fraudulently enlisting in the service of the United States.[6]

7. A court having once duly assumed jurisdiction of an offense and person, can not, by any wrongful act of the accused, be ousted of its authority or discharged from its duty to proceed fully to try and determine, according to law and its oath. Thus the fact that, pending the trial, the accused has escaped from military custody, furnishes no ground for not proceeding to a finding, and, in the event of conviction, to a sentence, in the case; and the court may and should find and sentence as in any other case.

Sec. II. **General Courts-Martial** have, *as regards persons and with reference to other courts-martial, exclusive jurisdiction* over officers,[7] cadets,[8] and "candidates for promotion."[9] Over enlisted men, other than candidates

---

[1] 63d A. W.

[2] 45th A. W.

[3] 46th A. W.

[4] Sec. 1343, R. S.

[5] Secs. 5306 and 5313, R. S.

[6] Act of July 27, 1892; see G. O. 57, A. G. O., 1892. For definition of fraudulent enlistment, see page 13, note 4, *supra.*

[7] 83d A. W.

[8] Sec. 1326, R. S.

[9] Act of July 30, 1892.

for promotion, they have concurrent jurisdiction with the inferior courts in cases cognizable by the latter.[1]

2. *As regards offenses,*[2] they have *exclusive jurisdiction* over all offenses punishable capitally,[3] and over those set forth in the 58th Article, when committed in time of war. Over other offenses they have *concurrent jurisdiction* with the inferior courts; but all offenses for which the limit of punishment is in excess of the limits of the punishing power of an inferior court, as well as all serious non-capital offenses for which limits of punishment have not been prescribed, will, when practicable, be tried by general court-martial.

CHARGES AND SPECIFICATIONS.

Sec. 1. **A military charge** corresponds to a *civil indictment.* It consists of two parts—the technical "*charge,*" which designates the alleged offense in general terms, and the "*specification,*" which sets forth the facts constituting the same. The requisite of a *charge* is, that it shall be laid under the proper Article of War or other statute; of a *specification,* that it shall set forth facts sufficient to constitute the particular offense. Under the general term "charges," any number of technical charges and their specifications may be included.

2. When an Article of War relates to but one kind of offense, the charge may be laid as a violation of such article. If the offense has a technical name or description known to the service, such as "Desertion," "Absence without leave," "Sleeping on post," etc., it may be charged simply as such, or, preferably, also laid under the appropriate Article of War. A charge laid under the 61st Article of War will properly describe the offense as "Con-

---

[1] Par. 931, A. R., prescribes that noncommissioned officers above the rank of corporal will not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial without the authority of the officer competent to order their trial by general court-martial. See also act approved June 18, 1898, page 99, *infra.*

[2] Military offenses, wheresoever committed, are punishable under the Articles of War; see page 13, par. 3, *supra.*

[3] 83d A. W.

duct unbecoming an officer and a gentleman." A charge laid under the 62d Article of War may give the name or description of the offense, alleging it to be "In violation of the 62d Article of War," or may describe it as "Conduct to the prejudice of good order and military discipline."

3. When an offense is specifically provided for in an Article of War the charge will be laid under that article and not under the 62d Article. Especially is it wrong to lay a charge under the 62d Article when the offense falls under an article which prescribes a fixed punishment.

4. In case of an absence from any appointed parade, drill, or other exercise, but not from the limits of the post, the charge should be laid under the 33d Article of War; in case of absence from the post, or command, under the 32d; and sometimes, in order that the court may be able to judge of the full nature of the offense, under both, as when some duty, other than an ordinary roll call, is neglected; *e. g.*, when a soldier, regularly detailed for guard, absents himself not only from guard mounting but also from his post.

5. Soldiers found drunk on any guard, party, or other duty after having actually entered upon such duty, but not until then discovered to be drunk, should be charged with violation of the 38th Article of War.

6. Accused persons will not be joined in the same charge, nor tried on joint charges, unless for concert of action in an offense. To warrant the joining of several persons in the same charge, the offense must be such as requires for its commission a combination and must have been committed in concert, in pursuance of a common intent.

7. As to whether an act which is a civil crime is also a military offense no rule can be laid down which will cover all cases, for the reason that what may be a military offense under certain circumstances may lose that character under others. For instance, larceny by a soldier from a civilian is not always a military crime, but it may become such in consequence of the particular features, surroundings, or locality of the act. What these may be

can not be anticipated with a sweeping rule, comprehensive enough to provide for every possible conjunction of circumstances. Each case must be considered on its own facts. But if the act be committed on a military reservation, or other ground occupied by the army, or in its neighborhood, so as to be in the constructive presence of the army; or if committed while on duty, particularly if the injury be to a member of the community whom it is the offender's duty to protect; or if committed in the presence of other soldiers, or while in uniform; or if the offender use his military position, or that of another, for the purpose of intimidation or other unlawful influence or object—such facts would be sufficient to make it prejudical to military discipline within the meaning of the 62d Article of War.

Sec. II. **The specification** need not possess the technical nicety of an indictment at common law. A bald statement of facts is sufficient, provided the legal offense itself be distinctly and accurately described.[1]

2. In order that the accused may be left in no doubt as to the precise offense with which he is charged, the *time* and *place* of the commission of the offense should be stated as accurately as possible. When any doubt exists as to the exact date and locality, it may be stated that the act specified was committed "on or about" a certain time, or "at or near" a given place. In preparing several specifications under one charge, the time and place of the alleged offense should be given in each.

Sec. III. Many of the Articles of War include two or more offenses. When a charge is to be laid under such an article, the particular offense committed should be stated. A specification in an alternative form is bad pleading. For example, it is wrong to allege "selling *or* through neglect losing," in violation of the 17th Article of War.

2. The prosecution is at liberty to charge an act under two or more forms, when it is doubtful under which it will more properly be brought by the testimony. In the

[1] VII, Opin. Att'y Gen'l, p. 604.

military practice, the accused is not entitled to call upon the prosecution to *elect* under which charge it will proceed in such, or indeed in any, case.

Sec. IV. "Commanding officers will, before forwarding charges, personally investigate them, and, by indorsement on the charges, will certifiy that they have made such investigation, and whether, in their opinion, the charges can be sustained."[1]

2. Charges against an enlisted man forwarded to the authority ordering a general court-martial, or submitted to a summary, garrison, or regimental court, must be accompanied by the proper evidence of previous convictions.[2] General courts-martial will consider only such evidence of previous convictions as is referred to them by the convening authorities.[3]

3. Charges against an enlisted man forwarded to the authority competent to order a general court-martial for his trial will also be accompanied by a statement of service[4] in accordance with the form given on page 108, *infra*.

In case of a deserter the surgeon's report required by par. 121, A. R., will also be forwarded.[5]

Sec. V. After charges have been formally referred by competent authority to a court-martial for trial, the court is not authorized, in its discretion and upon its own motion, to strike out a charge or specification, or to direct or permit the judge-advocate to drop, or withdraw, such charge or specification, or to enter a *nolle prosequi* as to the same. For such action the authority of the convening officer is requisite. Where, however, by a special plea or objection, an *issue* is made by the accused as to the sufficiency of any charge and specification, the court, without referring the question to the convening officer, is empowered to sustain the plea or objection, and quash or strike out the charge.

---

[1] Par. 928, A. R.

[2] Par. 929, A. R.; see page 40, par. 2, *infra*.

[3] Circ. No. 11, A. G. O., 1897.

[4] See page 56, par. 6, *infra*.

[5] For form, see page 108, *infra*.

ADDITIONAL CHARGES.

1. After the accused has been arraigned upon certain charges, has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, can not be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the members of the court and effectively to plead and defend.

ORGANIZATION.

1. The authority appointing a court-martial designates the place for holding the court, the hour of meeting, the members of the court, and a judge-advocate.[1]

2. Courts will be assembled at posts or stations where trial or examination will be attended with the least expense. They will, as far as practicable, hold their sessions so as to interfere least with ordinary routine duties. When necessary for the sake of immediate example, a court may be ordered to sit without regard to hours.[2]

3. A *general court-martial* assembles, at its first session, in accordance with the order convening it; thereafter, according to adjournment. The members wear full-dress uniform with their swords, except in inclement weather, when the president of the court may authorize undress uniforms; the judge-advocate appears in undress uniform without the sword; the accused, if an officer or non-commissioned officer, appears in full dress; if a private, in undress, and is without arms in any case. Military witnesses wear full dress, with their swords or side arms. The accused should not be brought before the court in irons, unless there are good reasons to believe that he will attempt to escape or conduct himself in a violent manner; but the fact that a prisoner has been tried in irons can not, in any case, affect the validity of the proceedings.

---

[1] Pars. 917 and 918, A. R.

[2] Ib., 918.

4. When the court is ready to proceed, the members take seats at a table provided for their use; the president sits at the head of the table and the other members at his right and left alternately, according to rank. The judge-advocate sits at the foot of the table or at a separate table; the accused and his counsel at a table provided for them and placed in a convenient position. A witness, when testifying, is seated near the judge-advocate, and the reporter at a table placed near the witness' chair.

5. The *order of procedure* is given in detail in the "Form for record of a general court-martial," page 109, *infra*. During the reading of the order convening the court and the arraignment, the judge-advocate and the accused should stand; while the court and the judge-advocate are being sworn, all stand; when a reporter, an interpreter, or a witness is being sworn, he and the judge-advocate should stand; and when the judge-advocate, the accused, or his counsel addresses the court, he should rise.

6. The organization of the court is complete on the swearing in of the members and the judge-advocate.

THE MEMBERS.

1. **Members** of a court-martial will be named in the order appointing it, in accordance with their rank. They will sit according to rank as announced, and will "behave with decency and calmness."[1] A court-martial has no power to punish its members, but a member is liable for improper conduct as for any other offense against military discipline. Improper words used by a member should be taken down in writing, and any disorderly conduct reported to the appointing authority.[2]

Reading of newspapers or other evidence of inattention by members of a court-martial during its sessions constitutes a violation of duty to the prejudice of good order and military discipline. It is the duty of the president of the court to admonish against such inattention, and charges may be preferred against a member who does not heed the admonition.

---

[1] Par. 917, A. R., and the 87th A. W.
[2] Par. 920, A. R.

2. "Members of a court martial, in giving their votes, shall begin with the youngest in commission."[1] In all deliberations the law secures the equality of the members.

3. When a member is prevented from attending a session of the court he will communicate the cause to the judge-advocate, so that the same may be entered in the record of proceedings. If he fails to do so it is the duty of the president at the next meeting of the court to call upon him for such explanation as he may desire to make.

4. A member stationed at the place where a court-martial sits is liable to duty with his command during adjournment of the court from day to day.[2]

THE PRESIDENT.

1. "A president of the court will not be announced. The officer highest in rank present will act as president."[3] Besides his duties and privileges as a member, the president is the organ of the court to maintain order and conduct its business. He speaks and acts for the court in every instance where a rule of action has been prescribed by law, regulations, or its own resolution. He administers the oath to the judge-advocate and authenticates by his signature all acts, orders, and proceedings of the court requiring it.

THE JUDGE-ADVOCATE.

1. "The judge-advocate * * shall prosecute in the name of the United States, but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself."[4]

---

[1] 95th A. W. A tie vote on *the findings* is a vote of "not guilty;" a tie vote on a proposed sentence or on any objection or motion is a vote in the negative. The sentence is not adopted, and the objection or motion is not sustained.

[2] Ib., 918.

[3] Ib., 919.

[4] 90th A. W.

2. *Before the court assembles* the judge advocate should note and report any irregularity in the order convening the court and see that the charges are technically and correctly drawn. He may ordinarily correct obvious mistakes of form, or slight errors in name, dates, amounts, etc., but he should not, without the authority of the convening officer, make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial.

3. The judge-advocate should acquaint the prisoner with the accusations against him, inform him of his right to have counsel,[1] and to testify in his own behalf, and furnish him with a copy of the charges, if desired. He may ask a prisoner how he intends to plead, but, when the accused is an enlisted man, he should in no case try to induce him to plead guilty or leave him to infer that if he does so his punishment will be lighter. When the accused determines to plead guilty the judge-advocate should advise him of his right to introduce evidence in explanation of his offense, and should assist him in securing it; and if the charge be desertion, the judge-advocate should satisfy himself that the accused understands that such plea will be an admission of his unauthorized absence with the intention of not returning.

4. The judge-advocate should also, before the court assembles, obtain a suitable room for the court, see that it is in order, procure the requisite stationery, summon necessary witnesses,[2] make a preliminary examination of the latter, and as far as possible systematize his plans for conducting the case.

5. *During the trial* the judge-advocate conducts the case for the Government. He executes all orders of the court; reads the convening order to the accused; swears the members of the court, the reporter, interpreter, and all wit-

---

[1] See page 24, *infra*.

[2] See page 31, *infra*.

nesses; arraigns the accused; examines witnesses; keeps, or superintends the keeping of, a complete and accurate record of the proceedings,[1] and affixes his signature to each day's proceedings.[2] In conjunction with the president of the court he authenticates the record by his signature,[2] and at the end of the trial transmits the same to the convening authority.[3]

6. While the court is in open session the judge-advocate should respectfully call the attention of the court to any illegalities in its action, and to any irregularities in its proceedings. He should act as legal adviser of the court so far as to give his opinion upon any point of law arising during the trial, when it is asked for by the court, but not otherwise.

7. *When a court sits in closed session* the judge-advocate will withdraw, and when his legal advice or assistance is required, it will be obtained in open court.[4]

8. Throughout the trial the judge-advocate should do his utmost to present the whole truth of the matter in question. He should oppose every attempt to suppress facts or to torture them into false shapes, to the end that the evidence may so exhibit the case that the court may render impartial justice.

9. The judge-advocate should regard his duty toward the accused as not strictly limited by the 90th Article of War, and when the latter is ignorant and without counsel the judge-advocate should take care that he does not suffer upon the trial from any ignorance or misconception of his legal rights, and has full opportunity to interpose such pleas and make such defense as may best bring out the facts, the merits, or the extenuating circumstances of his case.

---

[1] For form for record, see page 109, *infra*.

[2] Par. 954, A. R.

[3] Ib., 955. The proceedings of all courts appointed by the President will be sent direct to the Secretary of War. (Par. 892, A. R.)

[4] Par. 921, A. R.

10. Whenever the court adjourns to meet at the call of the president, the judge-advocate will notify the members of the time designated by the president for reassembling.

COUNSEL.

1. The commanding officer of a post where a general court-martial is convened will, at the request of any prisoner who is to be arraigned, detail a suitable officer as counsel for the defense. Officers directly responsible for the discipline of organizations serving at the post and the trial officer of the summary court are not eligible for this duty. If there be no such officer available for detail the fact will be reported to the authority appointing the court for his action.[1]

2. An officer detailed as counsel for a soldier before a general court-martial should guard the interests of the accused by all honorable and legitimate means known to the law[2] so far as they are not inconsistent with military relations. He should not obstruct the proceedings with frivolous or manifestly useless objections.

3. If the judge-advocate keeps the record in *longhand* the counsel will be required to reduce his questions and arguments to writing; but if the court has a stenographic reporter the counsel will be allowed to question witnesses and address the court orally.

REPORTER.

1. "The employment of a stenographic reporter, under section 1203, Revised Statutes, is authorized for general courts only, and in cases where the convening authority considers it necessary. The convening authority may also, when necessary, authorize the detail of an enlisted man to assist the judge-advocate of a general court in preparing the record."[3]

---

[1] Par. 926, A. R. This privilege of being represented by counsel does not apply to cases before inferior courts.

[2] Par. 926, A. R.

[3] Ib., 958.

2. When a stenographic reporter is employed under section 1203, Revised Statutes, he will be paid not to exceed $10 a day during the whole period of absence from his residence, traveling or on duty. This will be in full for taking and transcribing all notes, making such number of copies to be made at one writing as the judge-advocate may require, and, unless otherwise specially ordered by the Secretary of War, in full for all services rendered and expenses incurred by the reporter.[1]

3. "In special cases, when authorized by the Secretary of War, stenographic reporters may be employed at rates not exceeding 25 cents per folio (one hundred words) for taking and transcribing the notes in shorthand, or 10 cents per folio for other notes, exhibits, and appendices."[1]

4. "Reporters will be paid by the Pay Department, on the certificate of the judge-advocate."[1]

5. "No person in the military or civil service of the Government can lawfully receive extra compensation for clerical duties performed for a military court."[2]

INTERPRETER.

1. "Interpreters to courts-martial are paid by the Pay Department upon the certificate of the judge-advocate that they were employed by order of the court. They will be allowed the pay and allowances of civilian witnesses."[3]

CHALLENGE.

1. "Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time."[4]

---

[1] Par. 959, A. R.

[2] Ib., 960.

[3] Ib., 961. As to pay, etc., of civilian witness, see page 36, *infra*.

[4] 88th A. W. This Article of War authorizes the exercise of the right of challenge before all courts except summary courts.

2. A positive declaration by the challenged member that he is not prejudiced against the accused, nor interested in the case, is ordinarily satisfactory to the accused, and, in the absence of material evidence in support of the objection, will justify the court in overruling it. If, however, the statement is unsatisfactory, or the member makes no response, the accused may offer testimony in support of his objection or may subject the challenged member to an examination by interrogatories in the same manner that a juror is examined in criminal courts. If the accused desires that the challenged member be put on his *voir dire*, the judge-advocate will administer the oath before the court is sworn.

3. Courts should be *liberal* in passing upon challenges, but they will not entertain an objection that is not *specific*, nor one upon the mere assertion of the accused, if it is not admitted by the challenged member. A challenge upon the ground, admitted or proven, that a member preferred the charges and is a material witness in support thereof, or that he has investigated the charges and expressed the opinion that they can be established, should be sustained by the court.

4. The court of itself can not excuse a member in the absence of a challenge. A member, not challenged, who thinks himself disqualified, can only be relieved by application to the convening authority. No member who has been absent during the taking of evidence shall thereafter take part in the trial.

5. The judge-advocate is not challengeable; but in case of personal interest in the trial he should apply to the convening authority to be relieved.

OATHS.

Of Members.—The judge-advocate shall administer to each member of the court, before proceeding upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial:[1]

---

[1] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial.

"You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in a due course of law. So help you God."[1]

2. **Of the Judge-Advocate.**—When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form:[2]

"You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."[3]

3. **Of Witness.**—All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form:

"You swear (or affirm) that the evidence you shall give,

---

[1] 84th A. W., as amended by the act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[2] During the administration of the oaths to the court and the judge-advocate, all members of the court, the judge-advocate, and the accused stand.

[3] 85th A. W.

in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."[1]

4. **Of Reporter.**—"You swear that you will faithfully perform the duties of reporter to this court. So help you God."[2]

5. **Of Interpreter.**—"You swear that you will truly interpret in the case now in hearing. So help you God."

6. **Voir Dire.**—"You swear that you will true answers make to questions touching your competency as a member of the court (or witness) in this case. So help you God."

7. Judge advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths for the purposes of military justice, and for other purposes of military administration.[3]

POSTPONEMENT.

1. If postponement is *necessary*, application therefor should properly be made to the convening authority before the accused is arraigned. The court may, "for reasonable cause, grant a continuance to either party, for such time, and as often as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days."[4]

2. Upon application by the accused for postponement of trial because of the absence of a witness, it should distinctly appear, on his oath, that the witness is material, and why, and that the accused has used due diligence to procure his attendance, and has reasonable ground to believe, and does believe, that he will be able to procure such attendance within a reasonable time stated.

3. Application for *extended* delay will, when practicable, be made to the authority appointing the court. When made to the court, and if, in the opinion of the court, it is well founded, it will be referred to the convening author-

---

[1] 92d A. W.

[2] The reporter must be sworn in each case.

[3] Act of July 27, 1892; see G. O. 57, A. G. O., 1892.

[4] 93d A. W.

ity to decide whether the court shall be adjourned or dissolved.

ARRAIGNMENT.

1. The court being organized, and both parties ready to proceed, the judge-advocate will read the charges and specifications, separately and in order, to the accused, and ask him how he pleads to each—"guilty," or "not guilty." The order pursued, in case of several charges or specifications, will be to arraign on the first, second, etc., specifications to the first charge, then on the first charge, and so on with the rest.[1]

PLEAS.

1. Ordinarily the plea of the accused is "guilty" or "not guilty" to each charge and specification; or, guilty of a specification excepting certain words, and of the excepted words not guilty; or, as when charged with an offense which includes a lesser one of kindred degree, guilty to the specification except certain words, substituting therefor certain others, and to the charge not guilty, but guilty of the lesser kindred offense.[2]

2. A plea of guilty does not necessarily exclude evidence. In cases of discretionary punishment[3] a full knowledge of the circumstances attending the offense is essential to the court in measuring the punishment and to the convening authority in acting on the sentence. It is, therefore, proper for the court to take evidence after a plea of guilty, except when the specification is so descriptive as to disclose all the circumstances of mitigation or aggravation.

3. In all cases after a plea of guilty, the accused will be permitted to offer evidence in mitigation of the offense charged.

4. When testimony is heard after a plea of "guilty,"

---

[1] During the arraignment the judge-advocate and the accused stand.

[2] See page 39, par. 3, *infra*.

[3] See page 41 *infra*.

the accused may cross-examine the witnesses, produce evidence to rebut their testimony, offer evidence as to character, and address the court in extenuation of the offense or in mitigation of punishment.

5. When the accused pleads "guilty," and without any evidence being introduced makes a statement inconsistent with his plea, the statement and plea will be considered together, and if guilt is not conclusively admitted, the court will direct the entry of a plea of "not guilty," and proceed to try the case on the general issue thus made.

6. If the prisoner, from obstinacy or deliberate design, stands mute, or answers foreign to the purpose, the court will proceed to trial and judgment as if the prisoner had pleaded "not guilty."[1]

7. Instead of pleading to the general issue, the accused may plead in bar of trial,[2] either to the jurisdiction, by denying the legal right of the court to try him, or he may make a special plea to any specification, presenting reasons why he should not be tried on it. The burden of substantiating such pleas rests on the accused. Both sides should be heard, and the proceedings under the plea recorded. If the plea in bar of trial be found valid, the court will report its decision to the convening authority and await further instructions; if, by the special plea, an *issue* is made, the court is empowered to sustain or overrule the plea;[3] when a special plea is made and overruled, the accused will be required to plead to the general issue.

8. A second enlistment in the service of the United States, when the first has not been fulfilled, is not void, but voidable at the option of the United States only; so that a man who, whilst serving under such a second enlistment, commits an offense, can not successfully plead the fraudulent character of his second enlistment in bar of trial. Paragraph 134 of the Regulations relates to soldiers

---

[1] 89th A. W.

[2] As to plea of *autrefois acquit* in a case involving both a civil and a military offense, see Digest, Opin. J. A. G., pp. 119 and 328.

[3] See page 18, Sec. V, *supra;* also, page 117, note 2, *infra.*

not charged with crime who are discovered to be deserters from the Navy or Marine Corps, and does not interpose any obstacle to trial by court-martial for offenses committed while in the military service.

9. The *statute of limitation* (103d A. W.) is not prohibitory as to jurisdiction,[1] but is properly a matter of *defense*, which, to be effective, must be pleaded and proved, or, in some express manner, taken advantage of on the *evidence*.

ATTENDANCE OF WITNESSES.

Sec. I. "The judge-advocate will summon the necessary witnesses for the trial, but will not summon witnesses at the expense of the Government without the order of the court unless satisfied that their testimony is material and necessary."[2]

2. The accused is, in general, entitled to have all the material witnesses for his defense summoned; except when their testimony would be merely cumulative, and evidently add nothing to the strength of his case. As far as possible, he should be allowed a full and free defense, as the least denial to him of any proper facility, opportunity, or latitude for it may serve to defeat the ends of justice.

Sec. II. *To procure the attendance of witnesses stationed or residing within the State, Territory, or District in which the court is ordered to sit, the judge-advocate will proceed as follows:*

1. Judge-advocates of courts-martial will, whenever it is possible, send subpœnas through military channels.[3]

2. If the desired witness is a *civilian*, living near the post where the court is convened, duplicate subpœnas[4] will be prepared, one of which will be served upon the witness by the judge-advocate or by any person instructed by him; if the residence of the witness wanted is not near the post, but still within the State, etc., the judge-

---

[1] See authorities cited in note 5, page 124, Digest, Opin. J. A. G.

[2] Par. 922, A. R.

[3] Par. 924, A. R.

[4] For forms, see page 128, *infra*.

advocate will send the duplicate subpœnas to the convening authority, requesting service of the same.

3. Service is made, under court-martial practice, by a personal delivery of the subpœna to the witness; and *proof* of service by returning the duplicate original to the judge-advocate indorsed as explained in the form published on page 129, *infra*. Any person instructed by the judge-advocate or post commander may serve the subpœna,[1] but the service *must be personal*.

4. Should a witness fail to appear after due and reasonable notice, the judge-advocate has power to issue the like process to compel him to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such court is convened may lawfully issue.[2] This power also includes the power to execute such process through an officer, who shall be specially charged with its execution.[3]

5. Whenever it becomes necessary to enforce the attendance of a witness, the judge-advocate will issue a warrant of attachment,[4] directing and delivering it for execution to an officer designated by the department commander for the purpose.[5] He will also deliver to this officer the subpœna, indorsed with affidavit of service (to be returned when the warrant is executed), and a certified copy of the order appointing the court martial.

6. In executing such process it is lawful to use only such force as may be necessary to bring the witness before the court. Whenever force is actually required, the post commander nearest witness's residence will furnish a military detail sufficient to execute the process.[5]

7. If, in executing this legal process, the officer detailed for that purpose should be served with a writ of *habeas corpus* from any United States court, or by a United States judge, for the production of the witness, the writ will be promptly obeyed and "the person alleged to be

---

[1] Par. 923, A. R.

[2] Sec. 1202, R. S.

[3] 12 Opin. Att'y Gen'l, p. 501.

[4] For form see page 130, *infra*.

[5] Par. 923, A. R.

illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service direct to the Adjutant-General of the Army by telegraph."[1]

8. If, however, the writ of *habeas corpus* is issued by any *State* court (or a State judge) it will be the officer's duty to make respectful return, in writing, informing the court that he holds the person named in the writ by authority of the United States pursuant to a warrant of attachment issued under section 1202 of the Revised Statutes of the United States by a judge-advocate of a lawfully convened court-martial, and that the Supreme Court of the United States has decided that State courts and judges are without jurisdiction in such cases.[2]

9. After having made the above return, it is the duty of the officer to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other government. And, consequently, it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a writ of *habeas corpus* issued under State authority.[3]

Sec. III. *To procure the testimony of witnesses stationed or residing without the State, etc., the following practice will be observed:*

1. A writ of attachment does not run beyond the State, Territory, or District in which the court-martial sits. The testimony of civilian witnesses residing beyond[4] such State, Territory, or District will ordinarily be taken by deposition under the 91st Article of War, but this can not be done when it is necessary that they should be confronted with the accused. In such cases their testimony can only be taken on their voluntarily appearing before the court.

---

[1] Ib., 971. For general form for return, see page 138, *infra*.

[2] Pars. 969 and 970, A. R. For form for return, see page 136, *infra*.

[3] See 21 Howard, p. 523.

[4] See page 131, note 1, *infra*.

The testimony of military witnesses stationed or residing beyond[1] the State, Territory, or District in which the court sits will also ordinarily be taken by deposition.

2. The method of procedure to obtain a deposition[2] is as follows:

The party, prosecutor or defendant, desiring the deposition, submits to the court a list of interrogatories to be propounded to the absent witness; the opposite party then prepares and submits a list of cross-interrogatories, a reasonable time being allowed for this purpose; redirect and recross-interrogatories are added, if desired; finally the court, having assented to the interrogatories thus submitted, adds such as, in its judgment, may be necessary to elucidate the whole of the witness' testimony.

The interrogatories having been accepted by the court, the judge-advocate will prepare duplicate subpœnas[3] requiring the witness to appear in person, at a time and place to be fixed by the officer, military or civil, who is to take the deposition. If the name of this officer is not known, the space for it will be left blank.

The judge-advocate will then send the interrogatories and subpœnas to the convening authority, with a request that the deposition be secured.

Depositions may also be taken before the assembling of the court-martial, on interrogatories and cross-interrogatories or reasonable notice, subject to exceptions when read in court.

3. Judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are authorized to administer oaths and take depositions.[4] If none of these officers are available, any other army officer may be designated to see that the deposition is properly taken;[5] but the oath in such a case must be administered

---

[1] See page 131, note 1, *infra*.

[2] For form, see page 130, *infra*.

[3] For form, see page 128, *infra*.

[4] Sec. 4, act of July 27, 1892; see G. O. 57, A. G. O. 1892.

[5] An officer so designated will, before serving the subpœna, complete it if necessary by inserting the name and official designation of the notary (or other official having authority to administer the oaths), before whom it is to be taken and the date on which and place where it is proposed to take it. When the deposition has been duly taken, he will certify to this fact and transmit it to the president of the court.

and the deposition authenticated by a civil officer empowered by law to administer oaths for general purposes.

4. Upon the return of the interrogatories and deposition they will be submitted to the court by the president or judge-advocate. The papers will then be properly marked, appended to the record, and referred to in the proceedings, where all action upon the subject necessary for the information of the reviewing authority will be recorded.

5. Upon the receipt of the deposition, the judge-advocate will also prepare and sign the ordinary "accounts for a civilian witness,"[1] substituting for the usual statement in regard to attendance before the court a statement that he duly attended as a witness at a certain time and place and duly gave his deposition before a certain official named, and then transmit them to the witness with duplicate copies of the order convening the court. The *period of attendance* can be ascertained from the deposition.

6. In *capital* cases (*i. e.*, those in which the offense is punishable by death),[2] or in cases where the judge-advocate can certify "that the interests of justice demand that the witness shall testify in the presence of the court," the regular subpœnas will be made out by the judge advocate, certified to as above, if necessary, and transmitted to the department commander, with a request that they be duly forwarded to the witness, if an officer, or to the nearest post commander for service, if the witness is an enlisted man or a civilian.

7. "An officer or enlisted man who receives a summons to attend as a witness before any military court, board, civil court, or other tribunal competent to issue subpœnas which is sitting beyond the limits of the department where he is serving, will, before starting to obey the summons, forward it through the proper channel to his department commander, that necessary orders, or authority to obey a civil process, may be given. In urgent cases, or when the public interest would be liable

[1] For form see page 132, *infra*.

[2] In time of peace, desertion is not a capital offense.

to suffer by delay, a post commander may authorize immediate departure, reporting his action and reasons therefor to the department commander."[1]

8. "Officers and enlisted men reporting as witnesses before a civil court should receive from the civil authorities the necessary expenses incurred in travel and attendance. Neither mileage nor travel allowances will be paid in such cases by the War Department. If, however, it is absolutely necessary to furnish them transportation in kind to enable them to appear, as witnesses for the Government, before a civil court of the United States, an account of such expenditure, together with the evidence that they were properly subpœnaed and did attend the court, will be forwarded to the War Department for presentation to the Department of Justice. Officers providing such transportation will notify the court, or the marshal thereof, that it was furnished to enable the witnesses to perform the requisite journeys in obedience to the summons."[2]

FEES OF WITNESSES.[3]

1. A *civilian witness* before a court-martial is entitled, upon his discharge, to receive from the judge-advocate a certificate, setting forth the fact of his having been summoned as a witness in the case, and the number of days of his attendance in that capacity before the court. To entitle a witness to the payment of fees, it is not absolutely essential that he should produce a formal subpœna, addressed to and complied with by him, or that he should have been formally summoned in the case. A strict observance, however, of Section I, page 31, *supra*, would require the issue of formal subpœnas to witnesses on both sides, and it is the best practice for the judge-advocate to cause such to be served in each instance.

---

[1] Par. 925, A. R.

[2] Par. 72, A. R.

[3] When the employment of experts is necessary in a trial by court-martial, the judge-advocate will apply to the Secretary of War for authority to employ them and for a decision as to the compensation to be paid them.

2. When a civilian witness refuses to testify in answer to proper questions, he will not be paid the fees and allowances of a witness.

3. "Civilians in the employ of the Government when traveling upon summons as witnesses before military courts are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route, including transfers to and from railway stations, at rates not exceeding 50 cents for each transfer, and the cost of a double berth in a sleeping car or steamer when an extra charge is made therefor. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not exceeding $3 per day for each day actually and unavoidably consumed in travel or in attendance upon the court under the order of summons. No allowance will be made to them when attendance upon court does not require them to leave their stations."[1]

4. "A civilian not in Government employ duly summoned to appear as a witness before a military court will receive $1.50 for each day actually and unavoidably consumed in travel or in attendance upon the court under the summons, and 5 cents a mile for going from his place of residence to the place of trial or hearing and 5 cents a mile for returning. Civilian witnesses will be paid by the Pay Department."[2]

5. "The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance, without waiting for completion of return travel."[3]

6. "The items of expenditure authorized in paragraphs 962 and 963 (Army Regulations) will be set forth in detail and made a part of each voucher for reimbursement. No other items will be allowed. The correctness of the items will be attested by the affidavit of the witness, to be

---

[1] Par. 962, A. R. [2] Ib., 963. [3] Ib., 964.

made when practicable before the judge-advocate, and the voucher will be accompanied by the original summons or a duly certified copy thereof. The certificate of the judge-advocate will be evidence of the fact and period of attendance, and will be made upon the voucher."[1]

7. "Compensation to civilians in or out of Government employ for attendance upon civil courts is payable by the civil authorities."[2]

EXAMINATION OF WITNESSES.

1. Witnesses are usually examined *apart from each other*, no witness being allowed to be present during the examination of another who is called before him. But this rule is not inflexible; it is in modern practice subject to the discretion of the court, nor is it ever so rigidly observed as to exclude the testimony of a person who has inadvertently been present at the examination of other witnesses.

2. Courts-martial follow in general, so far as apposite, the common-law rules of evidence as observed by the United States courts in criminal cases, but they are not required by statute to do so, and a certain latitude in the introduction of evidence and the examination of witnesses, by an avoidance of technical and restrictive rules, is permissible when it is in the interest of the administration of military justice.

3. While the proper and usual order and sequence of examination of witnesses is outlined in the "Form for record of a General Court-Martial," page 109, *infra*, the court may in the interest of truth and justice call or recall witnesses, or permit their recall at any stage of the proceedings; it may permit material testimony to be introduced by either party quite out of its regular order and place, or permit a case once closed by either or both sides to be re-opened for the introduction of testimony previously omitted, if convinced that such testimony is so material that its omission would leave the investiga-

[1] Par. 965, A. R. [2] Ib., 966.

tion incomplete. In all such cases both parties must be present, and any testimony thus received would be subject to cross-examination and rebuttal by the party to whom it may be adverse.

FINDING.

1. The finding of the court will be governed by the evidence considered in connection with the plea. The finding upon the charge should be consistent with that upon the specification.

2. The accused may be found guilty of parts of the specification, not guilty of the remainder, and then, if the specification still supports the charge, guilty of the charge.

3. If the evidence proves the commission of an offense less in degree than that specified, yet kindred to it, the court may except words of the specification, substitute others instead, pronounce the guilt and innocence of the substituted and excepted words, respectively, and then find the accused not guilty of the charge, but guilty of the lesser kindred offense. Of this form of verdict the most familiar is the finding of guilty of absence without leave under a charge of desertion. In such a case, in its finding of guilty upon the specification, the court should in terms *except* the words "did desert," and substitute therefor the words "did absent himself without authority." The finding upon the charge should regularly be "not guilty, but guilty of absence without leave."[1]

4. Another legal and now common form of finding is where an accused is charged with a *specific* offense, made punishable by an Article of War, other than the 62d, and the court is of the opinion that, while the material allegations in the specification are proved, they do not fully

[1] It is beyond the power of a reviewing officer to change a finding by his own action. Thus where, in a case of desertion, the reviewing authority approved "so much only of the finding of guilty of desertion as convicted the accused of absence without leave," it was held that he thus substituted a finding of his own for that of the court, and that his action was unauthorized.

sustain the charge as laid, but do clearly establish a breach of military discipline; in this case the accused may properly be found guilty of the specification and not guilty of the charge, but guilty of "*conduct to the prejudice of good order and military discipline.*" It should be remembered, however, that the court can not in its finding legally substitute the 62d Article of War for any other, unless the proof fails to substantiate the specification under the original charge. The *reverse* of this form of finding has never been sanctioned. Thus where a charge is laid under the general article, a finding under any other article, or, where a charge is laid under a specific article, a finding under any other specific article, would be wholly irregular.

5. In a case of virtual acquittal, to use the term "guilty" is improper; the correct expression is, "Find the facts as charged, but attach no criminality thereto." "Guilty" should be employed only when the accused has been convicted of a crime deserving punishment.

PREVIOUS CONVICTIONS.[1]

1. Whenever a soldier is convicted of an offense for which a discretionary punishment is authorized, the court will receive evidence of previous convictions, if there be any; such evidence being limited, except in the case of desertion, to previous convictions by courts-martial[2] of an offense or offenses within one year preceding the arraignment and during the current enlistment. General, regimental, and garrison courts-martial will, after a finding of guilty, be opened for the purpose of ascertaining whether there is such evidence and, if so, of receiving it.[3]

2. Previous convictions by courts-martial must be proved by the records of previous trials and convictions,

---

[1] By "previous conviction" is meant a conviction where the sentence has been approved by competent authority. This refers to all trials except where the post commander sits as a summary court, when no approval of the sentence is required by law.

[2] The introduction of evidence of convictions by civil courts is not authorized.

[3] Executive order of March 30, 1898, page 44, *infra*.

or by duly authenticated copies of such records, or by duly authenticated copies of the orders promulgating such trials.[1] The usual evidence of previous convictions by summary court is the copy of a summary court record furnished to company and other commanders, as required by paragraph 932, Army Regulations, or one furnished for the purpose, and certified to be a true copy by the commanding officer or adjutant.[2]

3. The previous convictions are not limited to those for offenses similar to the one for which the accused is on trial. The object is "to see if the prisoner is an old offender, and therefore less entitled to leniency than if on trial for his first offense." This information might not be fully obtained if evidence of previous convictions of similar offenses only were laid before the court. It has no bearing upon the question of guilt of the particular charge on trial, but only upon the amount and kind of punishment to be awarded, and to this end it is proper that all previous convictions should be known.

PUNISHMENT.

1. **Punishment**, under the Articles of War, is either fixed or is left to the discretion of a court-martial. If the punishment is prescribed in the article violated, any other punishment than that prescribed is illegal. Before pronouncing sentence, the court should, therefore, in case of any uncertainty, examine the article violated to see what punishment may be legally awarded, and in awarding punishment it should be remembered that the proper amount of punishment is the least by which discipline can be efficiently maintained.

2. *For officers*, the legal punishments by courts-martial, depending on the nature of the offense, are death, dismissal, suspension from rank, command, or duty, with or without loss of pay or part of pay, loss of relative rank or files, imprisonment, fine or forfeiture of pay, and reprimand.

3. *For soldiers*, the legal punishments, depending on the

---

[1] Executive order of March 30, 1898, page 44, *infra*.

[2] Par. 929, A. R.

character of the offense and the jurisdiction of the court, are, death, confinement, confinement on bread-and-water diet, solitary confinement, hard labor, ball and chain, forfeiture of pay and allowances, dishonorable discharge from service,[1] and reprimand; for noncommissioned officers, reduction to the ranks also;[2] and for "candidates for promotion," deprivation of all rights and privileges arising from a certificate of eligibility.[3]

4. "No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body."[4]

5. Military prisoners will not be punished by being required to carry a heavy log. Some other punishment can be found equally effective and not open to the objections urged against this method.

6. Punishment by ball and chain will be imposed only in extreme cases.[5]

7. "Sentences imposing tours of guard duty are forbidden."[6]

8. Solitary confinement, or confinement on bread-and-water diet, shall not exceed fourteen days at a time, nor be again enforced until a period of fourteen days has elapsed. Nor shall such confinement exceed eighty-four days in any one year.[7]

9. A court-martial can direct a forfeiture only in favor of the United States, and can not assign the pay of a soldier to any other person; nor can a soldier be required to receipt for money paid without his consent.

10. "If a soldier be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, or if the sentence be disapproved by proper

---

[1] A dishonorable discharge is an entire expulsion from the Army and covers all unexpired enlistments.

[2] In regard to sergeants of the post, noncommissioned staff, and hospital stewards, see page 53, *infra*.

[3] Act of July 30, 1892; see G. O. 79, A. G. O., 1892.

[4] 98th A. W.

[5] See page 60; par. 3, *infra*.

[6] Par. 939, A. R.

[7] See page 53, *infra*.

authority, any amount paid as a reward for his arrest will not be stopped against his pay unless, in case of conviction of absence without leave, the sentence of the court shall so direct."[1]

11. "No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment."[2]

12. The 97th Article of War only limits the discretion of the court as "to imprisonment in the penitentiary, and it has been nowhere provided that the punishment may not in other respects be greater than the civil courts could inflict."[3] Notwithstanding this, a court-martial should properly consult the statute governing the civil courts, in order to determine a reasonable measure of punishment for the offense.

13. The most common offenses punishable by confinement in a penitentiary are, those mentioned in Article 60, and robbery, grand larceny, embezzlement, forgery, burglary, arson, mayhem, manslaughter, assault with intent to kill, rape, or assault with intent to commit rape. Any of these offenses, when committed to the prejudice of good order and military discipline, either in time of peace or war, are punishable as stated.

---

[1] Par. 127, A. R. This paragraph is not affected by the order of the President prescribing the limit of punishment.

[2] 97th A. W.

[3] Opin. U. S. Supreme Court; see G. O. 61, A. G. O., 1882.

MAXIMUM LIMITS OF PUNISHMENT.

The act of September 27, 1890, provides: "That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the court-martial, the punishment therefore shall not, in time of peace, be in excess of a limit which the President may prescribe." The last order of the President prescribing limits of punishment is as follows:

EXECUTIVE MANSION,
March 30, 1898.

The Executive order, dated March 20, 1895, establishing limits of punishment for enlisted men of the Army, under an act of Congress approved September 27, 1890, and which was published in General Orders, No. 16, 1895, Headquarters of the Army, is amended so as to prescribe as follows, to take effect thirty days after the date of this order:

ARTICLE I.

In all cases of desertion the sentence may include dishonorable discharge and forfeiture of pay and allowances.

Subject to the modifications authorized in Section 3 of this article the limit of the term of confinement (at hard labor) for desertion shall be as follows:

SECTION 1. In case of surrender—

(*a*) When the deserter surrenders himself after an absence of not more than thirty days, one year.

(*b*) When the surrender is made after an absence of more than thirty days, eighteen months.

SEC. 2. In case of apprehension—

(*a*) When at the time of desertion the deserter shall

not have been more than six months in the service, eighteen months.

(*b*) When he shall have been more than six months in the service, two and one-half years.

SEC. 3. The foregoing limitations are subject to modification under the following conditions:

(*a*) The punishment of a deserter may be increased by one year of confinement at hard labor in consideration of each previous conviction of desertion.

(*b*) The punishment for desertion when joined in by two or more soldiers in the execution of a conspiracy, or for desertion in the presence of an outbreak of Indians or of any unlawful assemblage which the troops may be opposing, shall not exceed dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for five years.

ARTICLE II.

Except as herein otherwise indicated punishments shall not exceed the limits prescribed in the following table:

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR.	
Selling horse or arms, or both.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three years.
Selling accoutrements	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.[1]

[1] EXECUTIVE MANSION, *August 10, 1896.*

To the present schedule of punishments for enlisted men, established under Act of Congress approved September 27, 1890, and announced in Executive order of March 20, 1895, as promulgated in General Orders, No. 16, of 1895, from the Headquarters of the Army, is added: "First-class privates of Engineers and Ordnance may be reduced to second-class privates of those corps, respectively, in all cases where for like offenses on the part of noncommissioned officers their reduction in grade is now authorized."

GROVER CLEVELAND.

Offenses.	Limits of punishment.
UNDER 17TH ARTICLE OF WAR—Cont'd.	
Selling clothing	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling horse or arms through neglect.	Four months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Losing or spoiling accoutrements or clothing through neglect.	One month's confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.
UNDER 20TH ARTICLE OF WAR.	
Behaving himself with disrespect to his commanding officer.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 24TH ARTICLE OF WAR.	
Refusal to obey or using violence to officer or noncommissioned officer while quelling quarrels or disorders.	Dishonorable discharge, with forfeiture of all pay and allowances and confinement at hard labor for two years.
UNDER 32D ARTICLE OF WAR.	
Absence without leave:[1]	
One hour or less	Forfeiture of $1; corporal, $2; sergeant, $3; 1st sergeant or noncommissioned officer of higher grade, $4.
For more than one to six hours, inclusive.	Forfeiture of $2; corporal, $3; sergeant, $4; 1st sergeant or noncommissioned officer of higher grade, $5.
For more than six to twelve hours, inclusive.	Forfeiture of $3; corporal, $4; sergeant, $6; 1st sergeant or noncommissioned officer of higher grade, $7.
For more than twelve to twenty-four hours, inclusive.	Forfeiture of $5; corporal, $6; sergeant, $7; 1st sergeant or noncommissioned officer of higher grade, $10.
For more than twenty-four to forty-eight hours, inclusive.	Forfeiture of $6 and five days' confinement at hard labor. For corporal, forfeiture of $8; sergeant, $10; 1st sergeant or noncommissioned officer of higher grade, $12, or, for all noncommissioned officers, reduction.

[1] Upon trial for desertion and conviction of absence without leave only, the court may, in addition to the limit prescribed for such absence, award a stoppage of the amount paid for apprehension, and for transportation of himself and guard.

Offenses.	Limits of punishment.
UNDER 32D ARTICLE OF WAR—Cont'd.	
Absence without leave—Continued.	
For more than two to ten days, inclusive.	Forfeiture of $10 and ten days' confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
For more than ten to thirty days, inclusive.	Forfeiture of $20 and one month's confinement at hard labor; for noncommissioned officer, reduction in addition thereto.
For more than thirty to ninety days, inclusive.	Three months' confinement at hard labor and forfeiture of $10 per month for same period; for noncommissioned officer, reduction in addition thereto.
For more than ninety days.	Dishonorable discharge and forfeiture of all pay and allowances and six months' confinement at hard labor.
UNDER 33D ARTICLE OF WAR.	
Failure to repair at the time fixed, to the place appointed, etc.—	
For reveille or retreat roll call and 11 p. m. inspection.	Forfeiture of $1; corporal, $2; sergeant, $3; 1st sergeant, $4.
For assembly of guard detail.	Forfeiture of $5; corporal, $8; sergeant, $10.
For guard mounting (by musician detailed for guard).	
For guard mounting (by musician not detailed for guard).	Forfeiture of $2; corporal, $3; sergeant, $5.
For assembly of fatigue detail.	
For dress parade	
For inspection and muster, weekly or monthly inspection.	
For target practice	
For drill	
For stable duty	
For athletic exercises	
UNDER 38TH ARTICLE OF WAR.	
Found drunk—	
On guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
On duty as head cook	Forfeiture of $20.

Offenses.	Limits of punishment.
UNDER 38TH ARTICLE OF WAR—Cont'd.	
Found drunk—	
On extra or special duty.	Forfeiture of $12; for noncommissioned officer, reduction and forfeiture of $20.
At formation of company for drill or on drill.	
At target practice	
At formation of company for dress parade or on dress parade.	
At reveille or retreat roll call.	
At inspection and muster, weekly or monthly inspection.	
At inspection of company guard detail or at guard mounting.	
At stable duty	
On fatigue	
UNDER 40TH ARTICLE OF WAR.	
Quitting guard	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
UNDER 51ST ARTICLE OF WAR.	
Persuading soldiers to desert.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
UNDER 60TH ARTICLE OF WAR.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
UNDER 62D ARTICLE OF WAR.	
Manslaughter	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Assault, with intent to kill.	Dishonorable discharge, forfeiture of all pay and allowances, and ten years' confinement at hard labor.
Burglary	Dishonorable discharge, forfeiture of all pay and allowances, and five years' confinement at hard labor.
Forgery	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
Perjury	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
False swearing	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Robbery	Dishonorable discharge, forfeiture of all pay and allowances, and six years' confinement at hard labor.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Cont'd.	
Larceny or embezzlement of property—[1]	
Of the value of more than $100.	Dishonorable discharge, forfeiture of all pay and allowances, and four years' confinement at hard labor.
Of the value of $100 or less and more than $50.	Dishonorable discharge, forfeiture of all pay and allowances, and three years' confinement at hard labor.
Of the value of $50 or less and more than $20.	Dishonorable discharge, forfeiture of all pay and allowances, and two years' confinement at hard labor.
Of the value of $20 or less.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
Fraudulent enlistment, procured by false representation or concealment of a fact in regard to a prior enlistment or discharge, or in regard to conviction of a civil or military crime.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for one year.
Fraudulent enlistment, other cases of.	Dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for six months.
Disobedience of orders, involving willful defiance of the authority of a noncommissioned officer in the execution of his office.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Using threatening or insulting language or behaving in an insubordinate manner to a noncommissioned officer while in the execution of his office.	One months' confinement at hard labor and forfeiture of $10; for noncommissioned officer, reduction in addition thereto.
Absence from fatigue duty..	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from extra or special duty.	Forfeiture of $4; corporal, $5; sergeant, $6.
Absence from duty as company, general mess, or hospital head cook.	Forfeiture of $10.
Introducing liquor into post, camp, or quarters in violation of standing orders.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness at post or in quarters.	Forfeiture of $3; for noncommissioned officer, reduction and forfeiture of $5.
Drunkenness and disorderly conduct, causing the offender's arrest and conviction by civil authorities at a place within 10 miles of his station.	Forfeiture of $10 and seven days' confinement at hard labor; for noncommissioned officer, reduction and forfeiture of $12.

[1] In specifications to charges of larceny or embezzlement the value of the property shall be stated.

Offenses.	Limits of punishment.
UNDER 62D ARTICLE OF WAR—Cont'd.	
Noisy or disorderly conduct in quarters.	Forfeiture of $4; corporal, $7; sergeant, $10.
Drunk and disorderly in post or quarters.	Forfeiture of $7; for noncommissioned officer, reduction and forfeiture of $10.
Abuse by noncommissioned officer of his authority over an inferior.	Reduction, three months' confinement at hard labor, and forfeiture of $10 per month for the same period.
Noncommissioned officer encouraging gambling.	Reduction and forfeiture of $5.
Noncommissioned officer making false report.	Reduction, forfeiture of $8 and ten days' confinement at hard labor.
Sentinel allowing a prisoner under his charge to escape through neglect.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel willfully suffering prisoner under his charge to escape.	Dishonorable discharge, forfeiture of all pay and allowances, and one year's confinement at hard labor.
Sentinel allowing a prisoner under his charge to obtain liquor.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Sentinel or member of guard drinking liquor with prisoners.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period.
Disrespect or affront to a sentinel.	Two months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Resisting or disobeying sentinel in lawful execution of his duty.	Six months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Lewd or indecent exposure of person.	Three months' confinement at hard labor and forfeiture of $10 per month for the same period; for noncommissioned officer, reduction in addition thereto.
Committing nuisance in or about quarters.	

ARTICLE III.

The introduction and use of evidence of previous convictions is subject to the following regulations:

1. Such evidence shall be limited to previous convictions by courts-martial of an offense or offenses within one year preceding the arraignment and during the current enlistment. These convictions must be proved by the records of previous trials and convictions, or by duly authenticated copies of such records, or by duly authenticated

copies of the orders promulgating such trials and convictions. Charges forwarded to the authority competent to order a general court-martial, or submitted to a summary, garrison, or regimental court-martial, must be accompanied by the proper evidence of previous convictions.

2. Whenever a soldier is convicted of an offense for which a discretionary punishment is authorized, the court will receive evidence of previous convictions, if there be any. General, regimental, and garrison courts-martial will, after a finding of guilty, be opened for the purpose of ascertaining whether there is such evidence, and, if so, of receiving it.

3. *Previous convictions in connection with inferior court offenses.*—When a soldier is convicted of an offense the punishment for which under Article II of this order or the custom of the service does not exceed that which an inferior court-martial may adjudge, the punishment so authorized may, upon proof of four or less previous convictions within the prescribed period, be increased one-half for each of such previous convictions; provided that upon proof of five or more such previous convictions the limit of punishment shall be dishonorable discharge, forfeiture of all pay and allowances, and confinement at hard labor for three months.

4. *Previous convictions in connection with general court-martial offenses.*—When the conviction is for an offense punishable under Article II of this order or the custom of the service with a greater punishment than an inferior court can award, such punishment, if it includes dishonorable discharge, shall not be increased by reason of previous convictions, but evidence thereof, whatever their number within the prescribed period, will be submitted to the court to aid it in determining upon the proper measure of punishment, subject to the limit already authorized.

If the authorized punishment under Article II of this order or the custom of the service exceeds what an inferior court can award and does not include dishonorable discharge, such punishment shall not be increased on account of previous convictions if less than five are con-

sidered, but if there be five or more, the court may adjudge dishonorable discharge and forfeiture of all pay and allowances with the authorized confinement, and when this confinement is less than three months, it may be increased to three months.

5. On a conviction of desertion, evidence of convictions of previous desertions may also be introduced, irrespective of the period which may have elapsed since such conviction or convictions.

6. When a noncommissioned officer is convicted of an offense not punishable with reduction, he may, upon proof of one previous conviction within the prescribed period, be sentenced to reduction in addition to the punishment already authorized.

ARTICLE IV.

When a soldier shall, on one arraignment, be convicted of two or more offenses, none of which is punishable under Article II of this order or the custom of the service with dishonorable discharge, but the aggregate term of confinement for which may exceed six months, dishonorable discharge with forfeiture of pay and allowances may be awarded in addition to the authorized confinement.

ARTICLE V.

This order prescribes the *maximum* limit of punishment for the offenses named, and this limit is intended for those cases in which the severest punishment should be awarded. In other cases the punishment should be graded down according to the extenuating circumstances. Offenses not herein provided for remain punishable as authorized by the Articles of War and the custom of the service.

ARTICLE VI.

Summary courts are subject to the restrictions named in the 83d Article of War. Soldiers against whom charges may be preferred for trial by summary court shall not be confined in the guardhouse, but shall be placed in arrest in quarters, before and during trial and while awaiting

sentence, except when in particular cases restraint may be necessary.

ARTICLE VII.

Substitutions for punishment named in Article II of this order are authorized at the discretion of the courts at the following rates:

Two days' confinement at hard labor for one dollar forfeiture; or the reverse; one day's solitary confinement on bread and water diet for two days' confinement at hard labor or for one dollar forfeiture; provided that a noncommissioned officer not sentenced to reduction shall not be subject to confinement; and provided that solitary confinement shall not exceed fourteen days at one time, nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year.

ARTICLE VIII.

Noncommissioned officers above the rank of corporal shall not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial without the authority of the officer competent to order their trial by general court-martial;[2] nor shall sergeants of the post noncommissioned staff or hospital stewards be reduced, but they may be dishonorably discharged whenever reduction is included in the limit of punishment.

WILLIAM McKINLEY.

SENTENCE.

1. When in any case the punishment is, by the Articles of War, left to the discretion of the court-martial, the court will, before proceeding to award the punishment, ascertain whether a limit has been fixed by the foregoing executive order.[1] Those members desiring to propose a sentence usually write it on a slip of paper and hand it to the president. The president reads the proposed sentences to the court and the members vote on them in

[1] "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed." (Par. 943, A. R.)

[2] See also act of June 18, 1898, page 99, *infra*.

order, beginning with the lightest, until a majority agree upon a sentence. In a case where a punishment is fixed, the members vote upon a sentence awarding this punishment. Upon a death sentence two-thirds of the members must concur (the record so explicitly stating), and no person can be sentenced to death except in cases expressly mentioned in the Articles of War or in section 1343, Revised Statutes, as thus punishable.[1]

3. A general court-martial may sentence a soldier to confinement in a penitentiary for any offense which may be thus punished "by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District."[2] When, therefore, the sentence of such a court-martial prescribes imprisonment, the court will state therein whether the prisoner shall be confined in a penitentiary[3] or at a post, being guided in its determination by the 97th Article of War, from which the foregoing quotation is taken.[4]

4. "When a sentence imposes forfeiture of pay, or of a stated portion thereof, for a certain number of months, it stops for each of those months the amount stated. Thus: 'Ten dollars of monthly pay for one year' would be a stoppage of $120. When the sentence is silent as to the date of commencement of forfeiture of pay, the forfeiture will begin at the date of promulgation of the sentence in orders, and will not apply to pay which accrued previous to that date."[5]

5. "Notwithstanding a sentence contemplates payment of a stated sum to a soldier upon his release from con-

---

[1] 96th A. W.

[2] 97th A. W.

[3] Unless the laws of the State, Territory, etc., in which the court is convened are at hand, it is impossible for the court to determine in all cases whether or not, under the 97th A. W., the offender is punishable by penitentiary confinement. Therefore, in case of any doubt, the words "in such place as the reviewing authority may direct," will be used in the sentence.

[4] Par. 940, A. R.

[5] Ib., 951.

finement, it can not be made unless there is a sufficient balance to his credit after all authorized stoppages are deducted."[1]

6. "A sentence adjudging a dishonorable discharge to take effect at such a period during a term of confinement as may be designated by the reviewing authority is illegal."[2]

RECORD OF PROCEEDINGS.

1. Every court-martial will keep an accurate record of its proceedings. The record in each case will be complete in itself, and will contain a copy of the order appointing the court. It will be authenticated by the signatures of the president and judge-advocate, the latter affixing his signature to each day's proceedings. The record must show that the court was organized as the law requires, that the prisoner was asked if he wished to object to any member and his answer to such question, and that the members of the court and the judge-advocate were duly sworn.

2. The reading of previous proceedings and of testimony for approval will be dispensed with, unless for special reason considered necessary by the court, or a witness desires to have certain testimony read for correction.[3]

3. All orders modifying the detail of the court and issued after its original organization must be incorporated in the record. The record should also note the fact of a new member taking his seat, or a new judge-advocate commencing to officiate, according to orders, on a certain day. (But, see page 26, par. 4.)

4. The entire proceedings will be spread upon the record; all orders and rulings of the court; all motions, propositions, objections, arguments, statements, etc., of the judge-advocate or the accused; the testimony of each witness, as nearly as possible in his own language; in short, every feature of the proceedings material to a complete history of the case and to a correct understanding

---

[1] Par. 953, A. R. [2] Ib., 949. [3] Circ. No. 27, A. G. O., 1897.

of every point of the same by the reviewing authority will be recorded at length.

5. Although, since the passage of the act of Congress of July 27, 1892, "to amend the Articles of War, etc.," it is desirable that the record of a court-martial should show that when it sat in closed session the judge-advocate withdrew, it will not vitiate the proceedings if this is not expressly stated. When the record shows that the court was closed, the presumption is that it was closed in accordance with the requirements of law.

6. The "statement of service" referred to on page 18, paragraph 3, *supra*, will not be introduced in evidence nor made a part of the record of the trial, but will be returned to the convening authority with the record.[1]

7. A recommendation to clemency will not be embraced in the body of the sentence; but will be appended to the record after any exhibits referred to in the proceedings. Only those members who concur in a recommendation should sign it.

REVISION OF RECORD.[2]

1. "When the record of a court exhibits error in preparation, or seemingly erroneous conclusions, the reviewing authority may reconvene the court for a reconsideration of its action, pointing out defects. Should the court concur in the views submitted, it will proceed by amendment to correct its errors, and may modify or completely change its findings. A reopening of the case, by calling or recalling witnesses, is illegal."[3]

2. An amendment can only be made by the court when duly reconvened for the purpose, and when made must be the *act of the court as such*. A correction made by the president or other member, or by the judge-advocate independently of the court, and by means of an erasure or otherwise, is unauthorized. If omissions in the record are to be supplied, the page and line on which they occur

---

[1] Par. 927, A. R.

[2] For form for revision see page 119, *infra*.

[3] Par. 957, A. R.

will be stated and the corrections given in full. The original record will not be interlined nor altered in any way.

REVIEWING AUTHORITY.

1. "No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being."[1]

2. The officer having authority to confirm the sentence of a court-martial will state at the end of the proceedings in each case his decisions and orders.[2]

3. All sentences of courts-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or the commander of the department, is not required by the Articles of War.[3] In time of peace, sentences directing the dismissal of an officer or inflicting the punishment of death require confirmation by the President.[4] Proceedings involving either dismissal or death will therefore (except in time of war, in cases mentioned in the 105th and 107th Articles of War) be forwarded by the convening authority direct to the Judge-Advocate-General for the action of the President.

4. A military commander can not delegate to an inferior or other officer his function as reviewing authority as conferred by the 104th and 109th Articles of War. Nor can he authorize a staff or other officer to subscribe for him his decision and orders on the proceedings.

5. Every officer authorized to order a court-martial has power to pardon or mitigate any punishment adjudged by it,[5] except that of death,[6] or the dismissal of an officer.[7]

6. "The power to pardon or mitigate punishment imposed by a court-martial, vested in the authority which confirms the proceedings, extends only to unexecuted por-

---

[1] 104th A. W.; see G. O. 57, A. G. O., 1892.
[2] Par. 955, A. R.
[3] 109th A. W.
[4] 105th, 106th, and 108th A. W.
[5] 112th A. W.
[6] 105th A. W.
[7] 106th A. W.

tions of a sentence, and continues only while the prisoner remains under the jurisdiction of that authority; the fact that a soldier has been dishonorably discharged through his sentence does not affect this power. An application for clemency in case of a general prisoner sentenced to confinement in a penitentiary will be forwarded to the Secretary of War for the action of the President."[1]

7. "Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court."[2]

8. While a reviewing authority may remit or mitigate a sentence, he can not change it so as to impose a punishment of a different nature; thus, he can not change a sentence of dishonorable discharge awarded an enlisted man to confinement at hard labor.[3]

9. "The authority which has designated the place of confinement, or higher authority, may change the place of confinement of any prisoner under the jurisdiction of such authority;"[4] but "when the court has sentenced a prisoner to confinement at a post, no power is competent to increase the punishment by designating a penitentiary as the place of confinement."[5]

10. When general courts-martial have properly sentenced soldiers to confinement in a penitentiary,[6] "department commanders will designate the United States Penitentiary at Fort Leavenworth, Kansas, as the place of execution of such sentences in cases in which the term of confinement imposed is more than one year. If any

---

[1] Par. 916, A. R.

[2] 111th A. W.

[3] As to authority of reviewing officer to change finding, see page 39, note 1, *supra*.

[4] Par. 946, A. R.

[5] Ib. 942. A punishment of confinement in a penitentiary, when legal, may be mitigated to confinement at a military post.

[6] See page 43, par. 11, *supra*.

State or Territory within a military department has made provision by law for the confinement of such prisoners in its penitentiaries, the department commander, with the approval of the Secretary of War, may designate one as the place of execution of sentence."[1]

11. "When a sentence of confinement or forfeiture is in excess of the legal limit, the part within the limit is legal and may be executed."[2]

12. "The time at which a dishonorable discharge is to take effect, as fixed by a sentence, can not be postponed by the reviewing officer."[3]

13. "A sentence to confinement, with or without forfeiture of pay, can not become operative prior to the date of confirmation. If it be proper to take into consideration the length of confinement to which the prisoner has been subjected previous to such confirmation, it may be done by mitigation of sentence."[4]

14. "An order remitting a forfeiture of pay operates only on the pay to become due subsequent to the date of the order."[5]

15. "The order promulgating the proceedings of a court and the action of the reviewing authority will, when practicable, be of the same date. When this is not practicable, the order will give the date of the action of the reviewing authority as the date of the beginning of the sentence. This does not apply to sentences of forfeiture of all pay and allowances. A soldier awaiting result of trial will not be paid before the result is known."[6]

16. Proceedings of general courts-martial in cases of officers and in important cases of enlisted men will be published in general orders. Unimportant cases of enlisted men will be published in special orders.[7]

---

[1] Par. 941, A. R.
[2] Par. 943, A. R.
[3] Ib. 950.
[4] Ib. 947.
[5] Ib. 952.
[6] Ib. 945.
[7] For form for special order, see page 135, *infra*.

CONFINEMENT AFTER TRIAL.

1. "Enlisted men serving sentences of confinement, not involving dishonorable discharge, will be designated 'garrison prisoners;' those sentenced to dishonorable discharge, 'general prisoners.'"[1]

2. Prisoners undergoing sentence of general court-martial, and those confined for serious offenses will, if practicable, be kept apart from those confined by sentence of an inferior court, or for minor offenses. General prisoners will not be confined with other prisoners except in case of necessity.[2]

3. "Prisoners will not be placed in irons except under sentence of court-martial, or in the extraordinary case of a prisoner who, in the judgment of the commanding officer, is a desperate or dangerous character, and in each such case report of action and the circumstances will be immediately made to the department commander. A prisoner may be shackeled or handcuffed while being transported from one post to another, or from a post to a penitentiary when, in the judgment of the officer in charge, the escape of the prisoner can not otherwise be prevented."[3]

4. "Prisoners will be forwarded from places where tried to posts at which they are sentenced to serve confinement only on orders of department commanders or higher authority. The strength of guards to accompany them will be limited to the necessities of safe delivery. The commanding officer of a post from which a prisoner is transferred will send, under seal, to the commanding officer of the post where the sentence of confinement is to be executed the following papers in his case, viz: Discharge papers, if discharged, descriptive list, orders promulgating and modifying sentences, statement of conduct while under sentence to date of transfer, and a list of clothing in possession of the prisoner when forwarded."[4]

---

[1] Par. 903, A. R.

[2] Par. 907, A. R. For special rules relating to prisoners, see G. O. 55, A. G. O., 1895.

[3] Par. 909, A. R.

[4] Ib. 911.

5. "All serviceable clothing which belongs to a prisoner, and his blankets, will accompany him to the post designated for his confinement, and will be fully itemized on the clothing list mentioned in the preceding paragraph. The guard in charge of the prisoner during transfer will be furnished with a duplicate of this list and will be held responsible for the delivery of all articles itemized therein, with the prisoner. At least one serviceable woolen blanket will be sent with every such prisoner so transferred."[1]

6. "The personal effects of military prisoners who have escaped from confinement, except such as possess some special value as keepsakes, may be disposed of by sale as in the case of effects of deceased soldiers, and the proceeds thereof, together with any money left by the prisoner in the hands of the company commander, be turned over to a paymaster, who should account for the same in the manner provided for paymasters' collections. The officer will take the paymaster's receipt for the amount paid him and forward the same to the Auditor for the War Department."[2]

7. "Prisoners will be allowed in abatement of their terms of confinement five days for each period of twenty-five days during the whole of which their conduct has been good; but abatements thus earned may be forfeited, either in whole or in part, by subsequent misconduct. Such forfeitures are determined by the commanding officer of the post where a prisoner is confined."[3]

8. "When the date for the commencement of a term of confinement imposed by sentence of a court-martial is not expressly fixed by the sentence, the term of confinement begins on the date of the order promulgating it. The sentence is continuous until the term expires, except when the person sentenced is absent without authority."[4] The word *days* in a sentence of confinement, means periods of twenty-four hours, counting from guard-mounting on the first day of the sentence.

---

[1] Par. 912, A. R.
[2] Ib. 913.
[3] Ib. 915.
[4] Ib. 944.

9. "When soldiers awaiting result of trial or undergoing sentence commit offenses for which they are tried, the second sentence will be executed upon the expiration of the first."[1]

10. Where a soldier while undergoing sentence of confinement imposed without dishonorable discharge was tried for a further offense and sentenced to dishonorable discharge and confinement, the period of confinement under his prior sentence will terminate upon the date of his dishonorable discharge, leaving to be executed only the confinement imposed by the second sentence.

11. "A general prisoner, when released from confinement at a post, will be carefully examined and a record of all marks, scars, and physical peculiarities made by a medical officer on the outline figure card used in the examination of recruits, which the medical officer will forward direct to the Surgeon-General."[2]

HABEAS CORPUS.

1. "Officers will make respectful returns in writing to all writs of habeas corpus served on them. When the writ is issued by a State authority, and the person held by the army officer is a civilian who has been apprehended under a warrant of attachment to be taken before a court-martial to testify as a witness, the officer will not produce the body, but will, by his return, set forth fully the authority by which he holds the person, and allege that the State authority is without jurisdiction to issue the writ of habeas corpus, and ask to have the same dismissed. He will also exhibit to the court or officer issuing the writ of habeas corpus the warrant of attachment and the subpœna (and the proof of the service of the subpœna) on which the warrant of attachment was based, and also a certified copy of the order convening the court-martial before which he had been commanded to take the person."[3]

---

[1] Par. 948, A. R.
[2] Ib., 914.
[3] Ib., 969.

2. "Should a writ of habeas corpus issued by a State court or judge be served upon an army officer commanding him to produce an enlisted man or show cause for his detention, the officer will decline to produce in court the body of the person named in the writ, but will make respectful return[1] in writing to the effect that the man is a duly enlisted soldier of the United States, and that the Supreme Court of the United States has decided that a magistrate or court of a State has no jurisdiction in such a case."[2]

3. "A writ of habeas corpus issued by a United States court or judge will be promptly complied with. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return[3] made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service direct to the Adjutant-General of the Army by telegraph."[4]

DISPOSITION OF RECORDS.

1. The Judge-Advocate-General revises and is the custodian of the records of the proceedings of all general courts martial.[5] The original records of proceedings, with the decisions and orders of the reviewing authorities made thereon, and also the records of proceedings of all general courts which require confirmation by the President but which have not been appointed by him, will be forwarded direct to the Judge-Advocate-General. One copy of the order promulgating the action of the court, and a copy of every subsequent order affecting the case, will be forwarded to the Judge-Advocate-General, with the record of each case. When more than one case is embraced in a single order, a sufficient number of copies will be forwarded to enable one to be filed with each record. The

---

[1] For form, see page 136, *infra*.

[2] Par. 970, A. R.

[3] For form, see page 138, *infra*.

[4] Par. 971, A. R.

[5] Sec. 1199, R. S.; par. 890, A. R.

proceedings of all courts appointed by the President will be sent direct to the Secretary of War.[1]

2. "Applications of officers, enlisted men, and military prisoners for copies of proceedings of general courts-martial, to be furnished them under the 114th article of war, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General."[2]

3. "Communications relating to proceedings of military courts on file in the Judge-Advocate-General's department will be addressed and forwarded direct by department commanders to the Judge-Advocate-General. In routine matters, the Judge-Advocate-General and judge-advocates may correspond with each other direct."[3]

4. Judge-advocates of departments are the custodians of the reports of cases tried by summary courts[4] and of all proceedings of garrison or regimental courts-martial.[5]

5. Post commanders will, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded.[6] They will also forward, without delay, to department headquarters all complete proceedings of garrison or regimental courts-martial.[7]

6. The reports of cases tried by summary courts and records of other inferior courts will be filed in the office of the judge-advocate at the headquarters of the department commander in whose department the courts were held, for two years, at the end of which time they may be destroyed.[8]

---

[1] Par. 892, A. R.

[2] Ib., 894.

[3] Ib., 895.

[4] Act of June 18, 1898, establishing the summary court; see page 99, *infra*.

[5] Act of Mar. 3, 1877.

[6] Act of June 18, 1898; see page 99, *infra*.

[7] Par. 956, A. R.

[8] Act of Mar. 3, 1877.

INFERIOR COURTS-MARTIAL.

THE SUMMARY COURT.[1]

1. **Composition, etc.**—The summary court is composed of one officer, designated by the commanding officer of a garrison, fort, or other place, regiment or corps, detached battalion or company, or other detachment, for such place or command, or for each battalion of a command. But the summary court may be appointed and the officer designated by superior authority when by him deemed desirable.

2. When but one commissioned officer is present with a command, he is the summary court and finally determines the cases tried by him. In such case no order appointing the court will be issued, but the officer will enter on the record that he is the "only officer present with the command." In all other cases the sentences must, before they can be executed, be approved by the officer appointing the court or the officer commanding for the time being.

3. The present summary-court act does not give the accused the right to object to trial by summary court and to demand trial by another court, nor does it require that when the trial officer is the accuser the case shall be tried by another court.

---

[1] Established by act of June 18, 1898; see page 99, *infra*.

4. But noncommissioned officers can not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall, in such cases, be brought to trial before garrison, regimental, or general courts-martial, as the case may be.

5. **Jurisdiction.**—The summary court has jurisdiction both in time of peace and of war. It has almost entirely displaced the garrison and regimental courts-martial, and has entirely superseded the field officer's court, which has been abolished.

6. *As regards persons,* the summary court can not legally try officers, cadets, or candidates for promotion. As to noncommissioned officers, see paragraph 4, *supra.* Over all other enlisted men and over general prisoners the summary court has jurisdiction.

7. *As regards time of trial,* the jurisdiction of a summary court is not affected by the time when cases are brought before it, the requirement of the law as to time being directory only. The commanding officer, and not the court, will determine when and what cases will be brought before it. Delay in the trial of a soldier does not invalidate the proceedings, but may be considered by the court in awarding sentence.[1]

8. **Power.**—Summary courts have power to administer oaths;[2] to hear and determine cases; and, when satisfied of the guilt of an accused party, to adjudge the punishment to be inflicted.[3]

---

[1] Par. 935, A. R. The provision of the 94th Article of War relating to hours of session of courts-martial is held not applicable to summary courts.

[2] This refers to oaths of witnesses. The trial officer himself is not sworn. The trial officers of summary courts, judge-advocates of courts-martial, and judge-advocates of departments have power to administer oaths for purposes of military justice and for other purposes of military administration. (See act of July 27, 1892.) A summary court is not empowered to issue process of attachment to compel the attendance of a civilian witness.

[3] Act of June 18, 1898; see page 99, *infra.*

9. **Procedure.**—The accused will be arraigned and allowed to plead, according to court-martial practice. When the accused pleads not guilty, witnesses will be sworn and evidence received, the accused being permitted to testify in his own behalf and make a statement, but the evidence and statement will not be recorded.

10. "The summary court, as soon as trial is concluded, will record its findings and sentence[1] in the prescribed record and submit it to the reviewing authority, who will enter his action thereon.[2] When but one officer is present with a command no approval of the sentence is necessary. In time of peace the summary court proceedings will be recorded in a book, but in time of war the prescribed blanks will be sufficient. No other records of the proceedings will be kept, and the trials will not be published in orders.[3]

11. **Previous Convictions.**—Charges submitted for trial by a summary court will be accompanied by evidence of all convictions of accused within the previous twelve months and during the current enlistment, which evidence will be furnished if practicable by the officer preferring the charges; if the evidence is contained in the summary court record book, a reference to it will be sufficient. If this evidence is not submitted or cited, the summary court may take judicial notice of any such evidence as the record book contains.[4]

12. Whenever, in determining on its sentence, a summary court shall take into consideration previous convictions, a note of the number of such previous convictions will be made on the summary court record.

13. **Limit of Punishing Power.**—Summary courts are subject to the restrictions of the 83d Article of War.[5]

---

[1] For forms for sentences, see page 127, *infra*.

[2] See page 121, *infra*; also page 122, par. 2, *infra*.

[3] Par. 932, A. R.

[4] Ib., 934.

[5] Ib., 936; see also page 52, *supra*.

Under this article inferior courts-martial may award sentences of confinement at hard labor and forfeiture of pay for one month, and, as necessarily included in this, may sentence noncommissioned officers to be reduced to the ranks. This is the *limit of their punishing power*. For those offenses for which a limit of punishment has been prescribed, a summary court is restricted to the *kinds* of punishment named, except as to the substitutions in the settled ratio given on page 53, *supra*.

14. **Record.**—"There shall be a summary court record kept at each military post, and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon."[1]

15. **Reviewing Authority.**—The commanding officers authorized to approve the sentences of summary courts and superior authority have power to remit or mitigate the same.[2]

16. When the only officer present with a command sits as a summary court, no approval of the sentence is required by law, but he should sign the sentence as such officer and date his signature.

17. **Instructions for Post and Other Commanders, relating to Summary Courts.**—Charges for offenses cognizable by inferior courts will be laid before the proper commander, who, if he thinks the accused should be tried, will cause him to be brought before the summary court.[3]

18. "Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders."[4] In accordance

---

[1] Act of June 18, 1898; see page 99, *infra*. For form for record book, see page 121, *infra*.

[2] Ib., sec. 3, page 100, *infra*.

[3] Ib., 932.

[4] Ib., 930.

with the spirit of the foregoing, company commanders are authorized, subject to the control of the commanding officer of the post, to dispose of cases of derelictions of duty in their commands which would be within the jurisdiction of inferior courts-martial by requiring extra tours of fatigue, unless the soldier concerned demands a trial. This right to demand a trial must be made known to him.[1]

19. "The summary court will be opened at a stated hour every morning except Sunday,[2] for the trial of such cases as may properly be brought before it. Trials will be had on Sunday only when the exigencies of the service make it necessary."[3]

20. "Commanding officers will furnish company and other commanders with copies of the summary court record relating to men of their commands, said copies to be certified to be true copies by the commanding officer or adjutant."[4]

21. The name of each officer at a post who has acted as a summary court will be reported on the post return, with dates.

THE GARRISON COURT-MARTIAL.

1. **Composition.**—A garrison court-martial is composed of three members[5] and a judge-advocate. The remarks regarding the eligibility of officers for court-martial duty, on page 10, paragraphs 1–3, *supra*, apply to garrison courts.

2. **Constitution.**—Every officer commanding a garrison, fort, or other place where the troops consist of different corps may appoint garrison courts.[6] The term "other place" includes any locality whatever where the

---

[1] Circular No. 5, A. G. O., March 14, 1898.

[2] If it be understood that the court shall not sit on Sunday, the officer charged with the duty of bringing offenders before it will comply with his duty by doing so at the first session of the court thereafter.

[3] Par. 935, A. R.

[4] Par. 932, A. R.

[5] 82d A. W.

[6] Ib.

command may be, whether in garrison or in the field. To fulfill the requirement regarding "different corps," it is sufficient if there be on duty in the command a *single* officer or soldier of another arm of service than that of which the main body is composed.

3. **Jurisdiction, etc.**—The present summary court act has expressly abolished the field officer's court, and has practically substituted the summary court for the garrison and regimental courts-martial, both in time of peace and war, subject to the provision that noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be brought to trial before garrison, regimental, or general courts-martial, as the case may be.[1]

4. Whenever it becomes necessary to convene a garrison court-martial for the trial of a noncommissioned officer who has objected to trial by summary court the order appointing it will state the fact of such objection.[2]

5. What has been said of the jurisdiction of *summary courts* as regards persons, offenses, and the "*limit of punishing power*" applies equally to garrison courts-martial. In other respects the general remarks heretofore made regarding the president, members, judge-advocate, organization, order of procedure, etc., of courts-martial apply to garrison courts, except when the general court is specially mentioned.

THE REGIMENTAL COURT-MARTIAL.[3]

1. **Composition.**—The regimental, like the garrison court-martial, is composed of three members and a judge-advocate; but in case of the regimental court only officers of the offender's regiment or corps are eligible for detail on the court.[4]

---

[1] Act of June 18, 1898; see page 99, *infra*.

[2] For form for order and record, see page 124, *infra*.

[3] See page 79, note 1, *infra*.

[4] 81st A. W.

2. **Constitution.**—Every officer commanding a regiment or corps may appoint a regimental court-martial.[1] The word "Corps" includes the Corps of Engineers, the Ordnance and the Signal Corps.

3. **Jurisdiction.**—With the exception that the regimental court-martial has jurisdiction only over offenders belonging to the regiment or corps from which the court is composed, what has been said of the jurisdiction, punishing power, and procedure of garrison courts applies equally to regimental courts.[2]

---

[1] 81st A. W.

[2] Regarding order for regimental court, see par. 937, A. R., and for form for record, see page 126, *infra*.

ARTICLES OF WAR.

SECTION 1342, R. S. The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers, the word soldier shall be understood to include noncommissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial.

ARTICLE 1. Every officer now in the Army of the United States shall, within six months from the passing of this act, and every officer hereafter appointed shall, before he enters upon the duties of his office, subscribe these rules and articles.

ART. 2. These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of 16 years without the written consent of his parents or guardians, or any minor under the age of 16 years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the serv-

ice, or suffer such other punishment as a court-martial may direct.

ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery, or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop, or company, or garrison under his command; or of the arms, ammunition, clothing, or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.[1]

---

[1] "Cashiered" and "dismissed from the service" are now considered practically synonymous.

ART. 9. All public stores taken from the enemy shall be secured for the service or the United States; and for neglect thereof the commanding officer shall be answerable.

ART. 10. Every officer commanding a troop, battery, or company, is charged with the arms, accoutrements, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

ART. 11. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per cent of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

ART. 12. At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent noncommissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted

by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit.

ART. 13. Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

ART. 15. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

ART. 16. Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

ART. 17. Any soldier who sells, or through neglect loses or spoils his horse, arms, clothing, or accoutrements, shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him.[1]

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested in, the sale of any victuals, liquors, or other necessaries of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or

---

[1] 17th A. W., as amended by act of July 27, 1892; see G. O. 57, A. G. O., 1892.

otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.

ART. 21. Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer,[1] shall suffer death, or such other punishment as a court-martial may direct.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop, battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his[2] own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and noncommissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.

ART. 25. No officer or soldier shall use any reproachful

---

[1] Disobedience of an order of a noncommissioned officer should be charged under the 62d article; see form 13, page 105, *infra*.

[2] *Sic* in Revised Statutes.

or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended in the presence of his commanding officer.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.

ART. 27. Any officer or noncommissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post, or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.

ART. 28. Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

ART. 29. Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of

War a true statement of such complaint, with the proceedings had thereon.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.[1]

ART. 31. Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer,

[1] The "regimental court-martial," under the 30th A. W., can not be used as a substitute for a general court-martial or court of inquiry, for it can not try an officer nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible of redress by the doing of justice to the complainant; that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from other soldiers, and the like, might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact, and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded, as nearly as practicable, in the same manner as the proceedings of ordinary courts-martial.

before he is dismissed or relieved, shall be punished as a court-martial may direct.

ART. 34. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

ART. 37. Every noncommissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.

ART. 39. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer death or such other punishment as a court-martial may direct.

ART. 40. Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away

his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

ART. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.

ART. 47. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

ART. 49. Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom,

prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

ART. 50. No noncommissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such noncommissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

ART. 53. Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

ART. 54. Every officer commanding in quarters, garrison, or on the march shall keep good order, and, to the utmost of his power, redress all abuses or disorders which

may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise ill-treating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished as a court-martial may direct.

ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish ponds, houses, gardens, grain fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

ART. 56. Any officer or soldier who does violence to any person bringing provisions or other necessaries to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

ART. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or an assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Terri-

tory, or district in which such offense may have been committed.

ART. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States which is punishable by the laws of the land, the commanding officer and the officers of the regiment, troop, battery, company, or detachment to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.[1]

ART. 60. Any person in the military service of the United States who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

---

[1] Municipal ordinances and by-laws are part of the "laws of the land" within the meaning of the phrase as used in the 59th A. W. (Opin. of Att'y Gen'l; see circular 15, A. G. O., 1894.)

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge. And if any person, being guilty of any of the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing Articles of War, are to be taken cognizance of by a general, or a regimental, garrison, or field officers' court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.[1]

ART. 63. All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the Articles of War, and shall be subject to be tried by courts-martial.

ART. 65. Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is

---

[1] "SEC. 3. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the 62d Article of War." (Act of July 27, 1892; see G. O. 57, A. G. O., 1892.) For definition of fraudulent enlistment, see page 13, note 4, *supra*, and for forms for charges see pages 104 and 107, *infra*.

set at liberty by his commanding officer shall be dismissed from the service.

ART. 66. Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.

ART. 67. No provost marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

ART. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.

ART. 70. No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.

ART. 71. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article,

may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

ART. 72. Any general officer commanding an army, a Territorial division or a department, or colonel commanding a separate department, may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President, for his approval or orders in the case.[1]

ART. 73. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecuter of any person under his command, the court shall be appointed by the next higher commander.

ART. 74. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.

ART. 75. General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.

ART. 76. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall thereupon order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.

[1] Act of July 5, 1884; see G. O. 73, A. G. O., 1884.

ART. 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.

ART. 79. Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

ART. 80. In time of war a field officer may be detailed in every regiment to try soldiers thereof for offenses not capital; and no soldier, serving with his regiment, shall be tried by a regimental [or] garrison court-martial when a field officer of his regiment may be so detailed.[1]

ART. 81. Every officer commading a regiment or corps shall, subject to the provisions of Article 80, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.

ART. 82. Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of Article 80, be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.

ART. 83. Regimental and garrison courts-martial, and field officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any noncommissioned officer or soldier for a longer time than one month.

ART. 84. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner

[1] Repealed by act of June 18, 1898, page 99, *infra*.

to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law. So help you God."

ART. 85. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form: "You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

ART. 86. The court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 87. All members of a court-martial are to behave with decency and calmness.

ART. 88. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 89. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

ART. 90. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner the answer to which might tend to criminate himself.

ART. 91. The deposition of witnesses residing beyond the limits of the State, Territory, or District in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.[1]

ART. 92. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

ART. 93. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.

ART. 94. Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court, require immediate example.

ART. 95. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

ART. 96. No person shall be sentenced to suffer death, except by the concurrence of two-thirds of the members

---

[1] "SEC. 4. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration." (Act of July 27, 1892; see G. O. 57, A. G. O., 1892.)

of a general court-martial, and in the cases herein expressly mentioned.

ART. 97. No person in the military service shall, under the sentence of a court-martial, be punished by confinement in a penitentiary, unless the offense of which he may be convicted would, by some statute of the United States, or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.

ART. 98. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

ART. 99. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.

ART. 100. When an officer is dismissed from the service for cowardice or fraud, the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came, or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.

ART. 101. When a court-martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

ART. 102. No person shall be tried a second time for the same offense.

ART. 103. No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.[1]

ART. 104. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.[2]

ART. 105. No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerrilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

ART. 106. In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.

ART. 107. No sentence of a court martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.

---

[1] 103d A. W., as amended by act of April 11, 1890; see G. O. 45, A. G. O., 1890.

[2] 104th A. W., as amended by act of July 27, 1892; see G. O. 57, A. G. O., 1892.

ART. 108. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution until it shall have been confirmed by the President.

ART. 109. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President or by the commanding general in the field, or commander of the department, is not required by these articles.

ART. 110. No sentence adjudged by a field officer, detailed to try soldiers of his regiment, shall be carried into execution until the same shall have been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.[1]

ART. 111. Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.

ART. 112. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court martial may be held shall have power to pardon or mitigate any punishment which such court may adjudge.[2]

ART. 113. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.

---

[1] Repealed by act of June 18, 1898, page 99, *infra*.

[2] See Par. 916, A. R.

ART. 114. Every party tried by a general court-martial shall, upon demand thereof made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

ART. 115. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer except upon a demand by the officer or soldier whose conduct is to be inquired of.

ART. 116. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.

ART. 117. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

ART. 118. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martials,[1] and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.

ART. 119. A court of inquiry shall not give an opinion

[1] *Sic*, in Revised Statutes.

on the merits of the case inquired of unless specially ordered to do so.

ART. 120. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

ART. 121. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony can not be obtained.

ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters shall command the whole, and give orders for what is needful in the service, unless otherwise specially directed by the President, according to the nature of the case.

ART. 123. In all matters pertaining to the rank, duties, and rights of officers the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.

ART. 124. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.

ART. 125. In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.

ART. 126. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.

ART. 128. The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

*OTHER STATUTORY PROVISIONS DEFINING COURT-MARTIAL OFFENSES.

SEC. 1343, R. S. "All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death."

SEC. 5306, R. S. "Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this title [see sec. 5304], or who makes any false state-

ment or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same."

Sec. 5313, R. S. "All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this title [see sec. 5305], and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same."

ACT ESTABLISHING THE SUMMARY COURT.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to promote the administration of justice in the Army," approved October first, eighteen hundred and ninety, as supplemented and amended by subsequent legislation, be, and the same is hereby, amended so as to read as follows:

"That the commanding officer of each garrison, fort, or other place, regiment or corps, detached battalion, or company, or other detachment in the Army, shall have power to appoint for such place or command, or in his discretion for each battalion thereof, a summary court to consist of one officer to be designated by him, before whom enlisted men who are to be tried for offenses, such as were prior to the passage of the Act 'to promote the administration of justice in the Army,' approved October first, eighteen hundred and ninety, cognizable by garrison or regimental courts-martial, and offenses cognizable by field officers detailed to try offenders under the provisions of the eightieth and one hundred and tenth articles of war, shall be brought to trial within twenty-four hours of the time of the arrest, or as soon thereafter as practicable, except when the accused is to be tried by general court-martial; but such summary court may be appointed and the officer designated by superior authority when by him deemed desirable; and the officer holding the summary court shall have power to administer oaths and to hear and determine such cases, and when satisfied of the guilt of the accused adjudge the punishment to be inflicted, which said punishment shall not exceed confinement at hard labor for one month and forfeiture of one month's pay, and, in the case of a noncommissioned officer, reduction to the ranks in addition thereto; that there shall be a summary court record kept at each military post and in the field at the headquarters of the proper command, in which shall be entered a record of all cases heard and determined and the action had thereon; and no sentence adjudged by said summary court shall be executed until it shall have been approved by the officer appointing the court, or by the

officer commanding for the time being: *Provided,* That when but one commissioned officer is present with a command he shall hear and finally determine such cases: *And provided further,* That no one while holding the privileges of a certificate of eligibility to promotion shall be brought before a summary court, and that noncommissioned officers shall not, if they object thereto, be brought to trial before summary courts without the authority of the officer competent to order their trial by general court-martial, but shall in such cases be brought to trial before garrison, regimental, or general courts-martial, as the case may be."

SEC. 2. That articles eighty and one hundred and ten of the Rules and Articles for the Government of the Armies of the United States be, and the same are hereby, repealed.

SEC. 3. That the commanding officers authorized to approve the sentences of summary courts and superior authority shall have power to remit or mitigate the same.

SEC. 4. That post and other commanders shall, in time of peace, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which report shall be filed in the office of the judge-advocate of the department, and may be destroyed when no longer of use.

SEC. 5. That soldiers sentenced by court-martial to dishonorable discharge and confinement shall, until discharged from such confinement, remain subject to the Articles of War and other laws relating to the administration of military justice.

SEC. 6. That it shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, or District, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government.

SEC. 7. That this Act shall take effect sixty days after its passage.

Approved, June 18, 1898.

GENERAL FORMS.

FORMS FOR CHARGES.

Charge and specification preferred against Private A—— B——, Co. ——, —— U. S. Infantry.

Form 1.—(*a*) **Charge**: "Selling clothing,[1] in violation of the 17th Article of War."

Specification: "In that private A—— B——, Co. ——, —— U. S. Infantry, did sell the following articles of his uniform clothing, issued to him, viz: One (1) forage cap, value $——; one (1) overcoat, made, value $——; and one (1) blanket, woolen, value $——; total value of articles sold, $——.

"This at ——, on the —— of ——, 18—."

C—— D——,
Captain, —— Infantry,
Officer Preferring Charge.

Witnesses:

1st Sergeant E—— F——, Co. ——, —— Infantry.
Private G—— H——, Troop ——, —— Cavalry.
Mr. I—— K——, citizen.

or,

(*b*) "Losing accoutrements, in violation of the 17th Article of War."[2]

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, through neglect, lose the following articles of his accoutrements, issued to him, viz: One (1) ——, value $——; and one (1) ——, value $——; total value of articles lost, $——.

"This at, etc."

---

[1] See page 17, Sec. III, *supra*.

[2] If a soldier is known to have unlawfully disposed of his clothing or accoutrements in a way not mentioned in the 17th Article, the charge should be laid under the 62d Article.

Form 2.—(*a*) **Charge**: "Disobedience of orders,[1] in violation of the 21st Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having received a lawful command from his superior officer, 2d Lieut. C—— D——, —— Infantry, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 18—."

or,

(*b*) "Striking his superior officer, in violation of the 21st Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did strike his superior officer, 2d Lieut. C—— D——, —— Infantry, with (*here describe the assault*) the said Lieutenant being in the execution of his office.

"This at ——, on the —— of ——, 18—."

Form 3.—**Charge**: "Absence without leave, in violation of the 32d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did absent himself from his company, without leave from his commanding officer, from ——, on the —— of ——, 18—, until ——, on the —— of ——, 18—.

"This at ——."

Form 4.—(*a*) **Charge**: "Absence from parade, in violation of the 33d Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the fixed time, to the place of parade appointed by his commanding officer.

"This at ——, on the —— of ——, 18—."

or,

(*b*) "Absence from 11 p. m. inspection, in violation of the 33d Article of War."

---

[1] A noncompliance by a soldier with an order emanating from a noncommissioned officer is not an offense under this article, but one to be charged, in general, under the 62d. A simple neglect to comply with a standing order is an offense under the 62d Article, and not under the 21st, which implies a willful defiance of authority.

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, not being prevented by sickness or other necessity, did fail to repair, at the fixed time, to the place appointed by his commanding officer for 11 o'clock p. m. inspection of his company.

This at ——, on the —— of ——, 18—."

Form 5.—(*a*) **Charge:** "Drunkenness on duty, in violation of the 38th Article of War."

Specification: In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty on stable guard, was found drunk.

This at ——, on the —— of ——, 18—."

or,

(*b*) "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty at drill, was found drunk.

"This at," etc.

Form 6.—(*a*) **Charge:** "Sleeping on post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard and posted as a sentinel, was found sleeping on his post.

"This at ——, on the —— of ——, 18—."

or,

(*b*) "Leaving post, in violation of the 39th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard and posted as a sentinel, did leave his post before he was regularly relieved.

"This at," etc.

Form 7.—**Charge:** "Quitting guard, in violation of the 40th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on guard, did, without urgent necessity, quit his guard without leave from his superior officer.

"This at ——, on the —— of ——, 18 —."

Form 8.—(*a*) **Charge**: "Desertion, in violation of the 47th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, a soldier in the service of the United States,[1] did desert the same at ——, on or about the —— of ——, 18—, and did remain absent in desertion until he was apprehended (or until he surrendered himself), at ——, on or about the —— of ——, 18—."

(*b*) If a soldier deserts and enlists in another troop, he should be charged with desertion under the 47th Article, and also with "fradulent enlistment, to the prejudice of good order and military discipline," under the 62d.[2] The specification to the latter charge should read as follows:

"In that Private A—— B——, Co. ——, —— Infantry, a soldier in the service of the United States, did, without a discharge from said regiment of infantry, fraudulently enlist in Troop ——, —— U. S. Cavalry, at ——, on the —— of ——, 18—, under the name of ——."

Form 9.—**Charge**: "Larceny, in violation of the 60th Article of War."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of $——, the property of the United States furnished and intended for the military service thereof.

"This at ——, on the —— of ——, 18—."

Violations of the 62d Article of War.

Form 10.—**Charge**: "Neglect of duty, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, being on duty as ——, and it being

---

[1] This form is applicable either in case a soldier has "received pay" or has been "duly enlisted." In either case the "statement of service" will enable the court to determine as to the statute of limitation and proper punishment. (See page 31, par. 9, and page 44, *supra*.

[2] See 50th A. W. and G. O. 57, A. G. O., 1892. For definition of "fraudulent enlistment," see page 13, note 4, *supra*.

his duty as such to ——, did fail and neglect to perform said duty.

"This at ——, on the —— of ——, 18—."

Form 11.—**Charge**: "Drunkenness and disorderly conduct, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co.——, —— U. S. Infantry, was drunk and disorderly in ——.

"This at ——, on the —— of ——, 18—."

Form 12.—**Charge**: "Suffering a prisoner to escape, to the prejudice of good order and military discipline."

(*a*) *Specification*: "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty as a sentinel, did, through neglect, suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 18—."

or,

(*b*) *Specification*: "In that Private A—— B——, Co. ——, —— U. S. Infantry, while on duty as a sentinel, did willfully suffer Private C—— D——, Co. ——, —— U. S. Infantry, a prisoner under his charge, to escape.

"This at ——, on the —— of ——, 18—."

Form 13.—**Charge**: "Conduct to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having received a lawful order from 1st Sergt. C—— D ——, Co. ——, —— U. S. Infantry, the said sergeant being in the execution of his office, to (*insert order*), did willfully disobey the same.

"This at ——, on the —— of ——, 18—."

Form 14.—**Charge**: "Assault with intent to kill, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously assault Sergeant ——, Co. ——, —— U. S. Infantry, by stabbing him with a knife, with intent to kill.

"This at ——, on the —— of ——, 18—."

Form 15.—**Charge**: "Burglary, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, in the night-time, break into and enter the quarters of 1st Lieut. C—— D——, —— U. S. Cavalry, with intent to commit a felony, to wit:—

"This at ——, about —— o'clock —— m., on the —— of ——, 18—."

Form 16.—**Charge**: "Larceny, to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, did feloniously take, steal, and carry away ——, of the value of —— dollars ($——), the property of Corporal ——, Co. ——, —— U. S. Infantry.

"This at ——, on the —— of ——, 18—."

Form 17.—**Charge**: "Perjury,[1] to the prejudice of good order and military discipline."

Specification: "In that Private A—— B——, Co. ——, —— U. S. Infantry, having been duly sworn, at his own request, as a witness in his own defense before a —— court-martial, convened at ——, by —— order No. ——, dated ——, 18—, for his trial, did willfully, falsely, and corruptly testify as follows:

"Question by judge-advocate: —— ——?

"Answer: —— ——.

"Which testimony was false in that (*specify in what respects*), and which testimony was known by him, the said A—— B——, to be false, was material to the issue

[1] Wharton says (Criminal Law, sec. 1259), "Perjury before courts-martial is by statute made indictable in most jurisdictions; but even when a statute does not apply, the weight of authority is that it is perjury at common law." It is a statutory crime, under section 5392 Revised Statutes of the United States. So that false swearing before a court-martial, if it possesses the other elements of perjury, is perjury, and can be tried as such by court-martial under the 62d Article of War. The rules of evidence in regard to perjury will then apply. When any of the elements of perjury are lacking the offense will properly be charged as "false swearing;" *e. g.*, when the matter is *not* material to the issue.

then being tried, and was given with intent to deceive the court.

"This at ——, on the —— of ——, 18—."

If any person not a soldier[1] fraudulently enlist in the United States service, the charge and specification should read:[2]

Form 18.—**Charge:** "Fraudulent enlistment, in violation of the 62d Article of War."

(*a*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the —— of ——, 18—, fraudulently enlist as a soldier in the service of the United States, by falsely representing that he had never been discharged from the United States service by sentence of a military court and by deliberately and willfully concealing from the recruiting officer, ——, the fact of his dishonorable discharge from ——, on ——, pursuant to sentence of court-martial; and that he has at ——, since said enlistment, received pay and allowances thereunder."

or,

(*b*) *Specification:* "In that Private A—— B——, Co. ——, —— U. S. Infantry, did, at ——, on the —— of ——, 18—, he being then a minor, fraudulently enlist as a soldier in the service of the United States by falsely representing himself to be over 21 years, to wit, —— years and —— months of age; and that he has at ——, since said enlistment, received pay and allowances thereunder."

---

[1] For case of fraudulent enlistment by a soldier, see page 104, form 8 (*b*), *supra;* and for definition of "fraudulent enlistment," see page 13, note 4, *supra.*

[2] Sec, 3 of the act of July 27, 1892; see page 86, note 1, *supra.*

STATEMENT OF SERVICE.[1]

Statement of service of —— ——, *Company* ——, —— *Regiment* ——. (*Required by paragraph 927, Army Regulations.*)

FORMER SERVICE.

Date of enlistment.	Date of discharge.	Character on discharge.

Date of present enlistment —— ——, 18—.

Date of confinement under present charges —— ——, 18—.

—— ——,

—— —— (Place.) *Commanding* ——.

—— —— (Date.)

SURGEON'S REPORT ON ALLEGED DESERTER.

FORT —— ——,

—— ——, 18—.

SIR: In compliance with par. ——, A. R., I have the honor to report that I have critically examined —— ——, an alleged deserter, and find him fit for service; (*or*) unfit for service on account of ——.

—— ——,

To the *Surgeon.*

Post Adjutant.

---

[1] See page 56, par. 6, *supra*. This form will be printed on official letter paper.

RECORD OF A GENERAL COURT-MARTIAL.[1]

SEC. I.—FORM FOR RECORD.

Page 1.[2]
(*In margin.*)[3]

CASE 1.

Proceedings[4] of a general court-martial which convened at ——, ——, pursuant to the following order:

(*Here insert a literal copy of the order appointing the court, and, following it, copies of any orders modifying the detail.*)

HEADQUARTERS DEPARTMENT OF ——,
——, ——, 18—.

SPECIAL ORDERS, }
No. —. }

A general court-martial is appointed to meet at ——, ——, at —— m., on —— ——, 18—, or as soon thereafter as practicable, for the trial of such persons as may be properly brought before it.

DETAIL FOR THE COURT.

Major....., 5th Cavalry.
Captain....., 2d Artillery.
Captain....., assistant surgeon.
1st Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry.
2d Lieutenant....., 2d Artillery.
2d Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry, judge-advocate.

---

[1] See "Record of proceedings," page 55, *supra*. The record will be clear and legible, and, if practicable, without erasure or interlineation.

[2] The pages of the record will be numbered and margins of 1 inch will be left at the top, bottom, and left side of each page.

[3] Words inclosed in parentheses, ( ), or brackets, [ ], are simply explanatory, and will not be copied in the record.

[4] "Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court." (114th A. W.) Applications for copies under this article will be addressed to the Judge-Advocate-General. (Par. 894, A. R.)

(*If less than thirteen members are detailed, the order will state:*)

A greater number of officers can not be assembled without manifest injury to the service.

(*In case travel is necessary, the following sentence will be added:*)

The journeys required in complying with this order are necessary for the public service.

By command of Brigadier-General —— ——.

(Signed) —— ——,

Assistant Adjutant-General.

FORT —— ——,

—— ——, 18—.

The court met pursuant to the foregoing order at —— o'clock — m.[1]

PRESENT.[2]

Major ....., 5th Cavalry.
Captain ....., assistant surgeon.
1st Lieutenant....., 10th Infantry.
1st Lieutenant....., 5th Cavalry.
2d Lieutenant....., 2d Artillery.
1st Lieutenant....., 5th Cavalry, judge-advocate.

ABSENT.

Captain....., 2d Artillery.
2d Lieutenant....., 10th Infantry.

---

[1] "Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, except in cases which, in the opinion of the officer appointing the court, require immediate example." (94th A. W.)

[2] In the record of the proceedings of a court-martial, at its organization for the trial of a case, the officers detailed as members and judge-advocate will be noted by name as present or absent. In the record of the proceedings of subsequent sessions the following form of words will be used, subject to such modifications as the facts may require: "Present, all the members of the court and the judge-advocate." When the absence of an officer who has not qualified, or who has been relieved or excused as a member, has been accounted for, no further note will be made of it.

(*If the cause of absence is known, it will be recorded; if unknown, it will be so stated.*)[1]

The court then proceeded to the trial of Private —— ——, Battery ——, —— U. S. Artillery, who, having been brought before the court, stated that he did not desire counsel; (*or*) introduced —— —— as counsel.

[REPORTER.][2]

| —— —— was duly sworn as reporter.[3]

The order convening the court[4] was read to the accused, and he was asked if he objected to being tried by any member present named therein; to which he replied in the negative.

[CHALLENGES.]

| (*or*) that he objected to —— —— on the following grounds:

| (*Insert objections.*)

| The challenged member stated:

| (*Insert the statement of the challenged member, who should always be requested to respond to the challenge and inform the court upon its merits. Should the accused, after this statement, desire to put the challenged member upon his voir dire, the record should continue:*)

| The accused having requested that the challenged member be sworn upon his *voir dire*,[5] —— —— was

---

[1] It is the duty of the judge-advocate to ascertain, if possible, the cause of absence. If a member is absent by order, the number and date of order will be given; if absent sick, a surgeon's certificate of sickness and inability to attend will be furnished by the absent member, and appended to the record.

[2] To facilitate use of form, subheads "reporter," "challenges," etc., are inserted and followed by marginal lines. To use form in case no reporter is employed, follow form to "reporter," and then omit as far as marginal line under "reporter" extends. In like manner omit when necessary for other subheads.

[3] The reporter must be sworn in each case. For form of oath, see page 28, par. 4, *supra*.

[4] (And the order or orders modifying the detail, if any.)

[5] For form of oath, see page 28, par 6, *supra*.

duly sworn by the judge-advocate, and testified as follows:[1]

The challenged member, the accused, and judge-advocate then withdrew,[2] and the court was closed, and on being opened the president announced in their presence that the objection of the accused was not sustained[3] (*or*) that the objection was sustained. —— —— then withdrew.

The accused was asked if he objected to any other member present;[4] to which he replied in the negative. (*or*) that he objected to —— —— on the following grounds:

(*Insert objection in full and record as before.*)

The members of the court and the judge-advocate were then duly sworn.[5]

[INTERPRETER.]

(*If an interpreter is required, he should now be sworn.*)

[DELAY.]

(*If delay is desired for cause known, application should now be made and the proceedings of the court recorded.*[6] *If no delay is requested, the record should continue:*)

The accused was then arraigned upon the following charges and specifications:

Charge I. —— ——.

Specification 1st. —— ——.

Specification 2d. —— ——.

Charge II. —— ——.

---

[1] The form of examination should be similar to that given for witness for the defense, page 116, *infra*. The accused should first ask his questions and then the judge-advocate and court such as they may deem pertinent.

[2] See page 56, par. 5, *supra*.

[3] In case of a tie vote see page 21, note 1, *supra*.

[4] Only one member at a time can be challenged, and a record of the proceedings in each case must be made.

[5] Whenever the same court-martial tries more than one prisoner on separate and distinct charges, the court will be sworn at the commencement of each trial and separate proceedings in each case prepared.

[6] See page 28, *supra*.

[PLEA IN BAR.]

To which the accused submitted the following special plea in bar of trial:[1]
(*or*)

To which the accused pleaded as follows:

To the 1st specification, 1st charge; "Guilty;" (*or*) "Not guilty."

To the 2d specification, 1st charge; "Guilty;" (*or*) "Not guilty."

To the 1st charge; "Guilty;" (*or*) "Not guilty."

To the 1st specification, 2d charge, etc.

Sergeant John Jones, Co. ——, —— Infantry, a witness for the prosecution, was duly sworn and testified as follows:

DIRECT EXAMINATION:

Questions by the judge-advocate:[2]

Q. Do you know the accused? If so, state who he is.

A. I do; Private —— ——, Battery ——, —— Artillery.

(*The succeeding questions of the judge-advocate and their answers should follow in order.*)[3]

CROSS-EXAMINATION:

Questions by the accused:

Q. —— ——?

A. —— ——.

(*If the accused declines to cross-examine the witness the record should state:*)

The accused declined to cross-examine the witness.

---

[1] If a special plea is made the plea, the reply of the judge-advocate, and the action of the court thereon will be fully stated; see page 30, par. 7, *supra*, and page 117, note 1, *infra*.

[2] When considered desirable the first question may be as to the identity of the witness.

[3] The record should set forth fully all the *testimony* introduced upon the trial, the oral portion as nearly as practicable in the precise words of the witness. If the court should decide to expunge any part it will not be literally expunged or omitted from the record but will not be thereafter considered as part of the evidence.

REEXAMINATION:

Questions by the judge-advocate:

Q. —— ——?

A. —— ——.

EXAMINATION BY THE COURT:

Q. —— ——?

A. —— ——.

[OBJECTION TO QUESTION.][1]

Question by a member: ——?

To this question, the accused (or party objecting) objected as follows:

(*Insert objection.*)

To which the member replied:

(*Insert reply.*)

The accused and judge-advocate withdrew and the court was closed, and on being opened the president announced in their presence that the objection was sustained.

(*or*) was not sustained.

(*In the latter case the record should continue:*)

The question was then repeated by the judge-advocate.

A. —— ——.

(*If the court considers it necessary to hear the testimony of the witness read or the witness desires to have certain testimony read for correction the record will show the fact and the corrections, if any.*)

(*At the close of the prosecution the record should continue:*)

The judge-advocate announced that the prosecution here rested.

---

[1] If a question, put by a member, is objected to by another member, the judge-advocate, or the accused, and the objection is sustained, it will be *recorded as a question by a member*, and *not* answered. If the objection is not sustained it will be *recorded as a question by the court*, repeated by the judge-advocate, and *must* be answered. If a question is objected to by anyone, at any time during the trial, the above method of recording the action of the court will be followed.

(*If the court adjourns to meet another day the record should continue:*)

The court then, at —— o'clock, —. m., adjourned to meet at —— o'clock —. m. on ——.

C—— D——,
1st Lieut. —— ——,
Judge-Advocate.[1]

FORT —— ——,
—— ——, 18—.

The court met, pursuant to adjournment, at —— o'clock, —. m.

PRESENT.[2]

All the members of the court and the judge-advocate.[3]

The accused, his counsel, and the reporter were also present.

(*If the proceedings of the previous* day are required by the court to be read, the fact will be recorded in the following form:

The proceedings of —— were read[4] and approved.

(*or*) corrected as follows:

(*In latter case, enumerate corrections, giving page and line on which they occur.*)

Corporal John Smith, Co. ——, —— Infantry, a witness for the defense, was duly sworn and testified as follows:

DIRECT EXAMINATION:

---

[1] The judge-advocate will sign each day's proceedings. (Par. 954, A. R.)

[2] See page 110, note 2, *supra*.

[3] If any member is absent add except —— (*giving* cause of absence if known).

[4] The reading of previous proceedings will be dispensed with, unless for special reason considered necessary by the court. See page 55, par. 2, *supra*.

Question by the judge-advocate:[1] Do you know the accused? If so, state who he is.

A. —— ——.

Questions by the accused:

Q. —— ——?

A. —— ——.

(*The examination should be conducted as in case of a witness for the prosecution, the judge-advocate cross-examining, and the accused, if he so desires, re-examining the witness.*)

(*Should the accused wish to testify in his own behalf, the record will continue:*)

The accused, at his own request, was duly sworn as a witness, and testified as follows:

Q. —— ——?

A. —— ——.

(*The examination of the accused should be conducted in the same manner as that of any other witness.*)

(*If the accused has no other witness to call, the record should continue:*)

The accused had no further testimony to offer and no statement to make.

(*or*) having no further testimony to offer, made the following verbal statement in his defense.

(*or*) having no further testimony to offer, submitted a written statement in his defense, which was read to the court, and is hereto appended and marked A.[2]

---

[1] Though this is a witness for the defense, the judge-advocate will ask the preliminary question for the purpose of determining his identification of the accused. When considered desirable, the first question may be as to the identity of the witness.

[2] All documents and papers made part of the proceedings, or copies of them, will be appended to the record, in the order of their introduction, after the space left for the remarks of the reviewing authority, and marked in such a manner as to afford easy reference. It is not necessary to encumber a record by spreading upon it documents or other writings, or matter excluded by the court. The record should simply specify the character of the writings and the grounds upon which they were ruled out.

(*or*) requested until —— o'clock —. m. to prepare his defense.

(*If the court takes a recess during the time asked for, the record will continue:*)

The court then took a recess until — o'clock —. m.; at which hour the members of the court, the judge-advocate, the accused, his counsel, and the reporter resumed their seats.

(*Or, if the court has other business before it, the record may continue:*)

The court then proceeded to other business, and at —— o'clock —. m. resumed the trial of this case; at which hour, etc.

The accused submitted his defense, which was read to the court, and is hereto appended and marked B.[1]

The judge-advocate submitted the case without remark. (*or*) replied as follows:[2]

(*Insert reply.*)

(*or*) submitted and read to the court a written reply, which is hereto appended and marked C.

The accused and judge advocate then withdrew and the court was closed, and finds the accused, Private —— ——, Battery ——, —— U. S. Artillery:

Of the 1st specification, 1st charge: "Guilty;" (*or*) "Not guilty."

Of the 2d specification, 1st charge: "Guilty, except the words '—— ——,' and of the excepted words Not guilty."

Of the first charge: "Guilty;" (*or*) "Not guilty;" (*or*) "Not guilty, but guilty of, etc., —— ——."

Of the 1st specification, 2d charge, etc.

---

[1] The statement of the accused, or argument in his defense, and all pleas in bar of trial or in abatement, when in writing, should be signed by the accused, referred to in the proceedings as having been submitted by him, and appended to the record, whether he is defended by counsel or not.

[2] The judge-advocate is entitled by usage to sum up the case and present an argument at the conclusion of the trial, even though the accused declines to make argument or statement.

[PREVIOUS CONVICTIONS WHEN ACCUSED IS FOUND GUILTY.]

(*If the accused is found guilty,*[1] *and the punishment is discretionary, the record should continue:*)

The judge-advocate and accused were then recalled and the court opened, and the judge-advocate stated that he had no evidence of previous convictions to submit.

(*or*) read the evidence of previous convictions[2] hereto appended and marked D, E, etc.

(*If the accused has any statement to make in regard to his previous convictions, it will be recorded.*)

The accused and judge-advocate then withdrew and the court was closed, and sentences him, Private ——, Battery ——, —— U. S. Artillery, ———.

[NO PREVIOUS CONVICTIONS, OR ACCUSED ACQUITTED.]

(*If the punishment is not discretionary, or the accused is acquitted, the record, after the findings are stated, should continue:*)

And the court does therefore sentence him, etc.

(*or*) does therefore acquit him, Private ——, Battery ——, —— U. S. Artillery.

The judge-advocate was then recalled, and the court at ——. m. proceeded to other business.

(*or*) adjourned until ——. m., the —— inst.

(*or*) adjourned to meet at the call of the president.[3]

---

[1] See page 50, *supra*.

[2] See "Previous convictions," page 40, *supra*. When the proof produced is the copy furnished to the company or other commander, in accordance with par. 932, A. R., it will be returned to him and a copy of it attached to the record of the general, regimental, or garrison court trying the case. (Par. 929, A. R.)

[3] The hour of adjournment will be stated, unless the court is authorized to sit without regard to hours.

(or, on completion of the trial of the last case before the court) adjourned *sine die.*

A—— B——,
Major ——,
President.

C—— D——,
1st Lieut. ——,
Judge-Advocate.

(At least two blank pages will be left after the adjournment for the decision and orders of the reviewing authority.)

FORM OF BRIEF.

(The papers forming the complete record will be fastened together at the top, and the record folded in four folds, and briefed on the first fold as follows:)[1]

——— ———,
Private, Co. ——, ——.
———

Trial by general court-martial
at ——— ——— ———;
Commencing ———, 18—;
Ending ———, 18—.
President:
Major —— ——,
—— ——.
Judge-Advocate:
1st Lieut. —— ——,
—— ——.

SEC. II.—FORM FOR REVISION OF RECORD.[2]

FORT —— ——,
—— ——, 18—.

The court reconvened at —— o'clock —. m., pursuant to the following order:

(Insert copy of order.)

---

[1] When the record is completed, the judge-advocate will forward it without delay to the convening authority. (Par. 955, A. R.) See also page 57, par. 3, and page 63, par. 1, *supra.*

[2] See "Revision of record," page 56, *supra.*

(*or*) pursuant to the following indorsement:

(*Insert copy of indorsement.*)

PRESENT.[1]

——— ———.

ABSENT.

(*Insert names of absentees, and state cause of absence, if known.*)

The judge-advocate read to the court the foregoing order.

(*or*) the foregoing indorsement of the convening authority.

The judge-advocate then withdrew, and the court was closed and revokes its former findings, and finds the accused, etc.

(*or*) revokes its former sentence, and sentences the accused, etc.

(*or*) respectfully adheres to its former findings and sentence.

(*or*) amends the record by, etc.[2]

The judge-advocate was then recalled and the court at ——— —. m., etc.

A——— B———,
Major ———,
President.

C——— D———,
1st Lieut. ———,
Judge-Advocate.

(*The record of revision will be appended to the original proceedings and the whole indorsed and forwarded as before.*)

---

[1] If the findings and sentence are to be considered, all the members who voted on them should, if possible, be present. At least five members of the court, who acted upon the trial, must, and the judge-advocate should, be present at a revision; but it is in general neither necessary nor desirable that the accused should be present.

[2] See page 56, par. 2, *supra*.

RECORD OF A SUMMARY COURT.

SEC. I.—FORM FOR RECORD.[1]

Record of a summary court at —— ——, appointed by —— Orders No. ——, Headquarters —— ——, 189—.

Number.	Name, rank, company, and regiment.	Article of War violated.	Synopsis of specification.	Finding.	Number of previous convictions.	Sentence, with signature of trial officer.	Action of officer appointing court, with date and signature.[2]

SEC. II.—REMARKS ON RECORD.

1. The synopsis of specification will be as brief as is consistent with showing, in connection with the Article of War violated, the nature of the offense and the date of its commission. For example, under the 32d Article of War, the synopsis may be, "From 1 a. m. to 10 p. m., October 10, 1892;" under the 33d Article, "Absent from reveille roll call, October 10, 1892;" and under the 38th Article, "At drill, October 10, 1892." So under the 62d

[1] Blank forms for summary court record and for monthly report of cases tried (for form, see page 122, *infra*) will be furnished by the Adjutant-General of the Army. The new form for the copy of summary court record, to be used as evidence of previous convictions, is intended for the purpose of reducing this evidence to the smallest possible space and bulk. The blanks are not intended for only one case each, but for as many cases as there is room for on the blank. The margin at the left of the blank is intended for binding with the court-martial record. For instructions regarding evidence of previous convictions by summary court, see page 40, par. 2, and page 67, par. 11, *supra*.

[2] When commanding officer tries case no approval necessary.

Article it may be, "Drunk in quarters, October 10, 1892;" "Absent from fatigue, October 10, 1892;" "Absent from duty as company cook, October 10, 1892," etc.

The sentence will, when practicable, be recorded in brief, as for example: "Forfeiture of $10, and ten days' confinement at hard labor."

2. When the only officer present with a command sits as a summary court, no approval of the sentence is required by law, but he should sign the sentence as such officer and date his signature.

3. The name of the post or other place will not be given under the head of "Action of officer appointing court, with date and signature," as this information appears at the head of the record.

MONTHLY REPORT OF SUMMARY COURT CASES.

Report of cases tried by summary court at —— ——, for the month of ——, 189—.

Number.	Name, rank, company, and regiment.	Article of War violated.	Synopsis of specification.	Finding.	Number of previous convictions.	Sentence. (If mitigated, give sentence as mitigated only. Signature of trial officer not to be copied. Give date of signature of officer appointing court.)

RECORD OF A GARRISON COURT-MARTIAL.[1]

SEC. I.—FORM FOR RECORD.

CASE ——.

Proceedings of a garrison court-martial convened at ——, pursuant to the following order:

FORT —— ——,
—— ——, 18—.

ORDERS, }
No. ——. }

A garrison court-martial will convene at this post at —— o'clock a. m., on —— ——, 18—, or as soon thereafter as practicable, for the trial of Corporal —— ——, Company ——, —— Infantry, he having objected to trial by summary court.[2]

DETAIL FOR THE COURT.

Captain —— ——.
1st Lieutenant —— ——.
2d Lieutenant —— ——.
2d Lieutenant —— ——, judge-advocate.

By order of —— ——.
(Signed) —— ——,
1st Lieutenant ——,
Adjutant.

FORT —— ——,
—— ——, 18—.

The court met, pursuant to the foregoing order, at —— o'clock —. m.[3]

---

[1] The form of record for a garrison court-martial differs from that for a general court-martial only in respect to the form of the order appointing the court. The form here given is that for a case in which a plea of "Guilty" is entered; if the prisoner pleads "Not guilty," or makes a special plea, the form for record of a general court will be followed.

[2] See page 70, par. 4, *supra*.

[3] If the order contains the sentence, "The court may sit without regard to hours," the hours of meeting and adjournment need not be recorded.

PRESENT.

Captain —— ——.

1st Lieutenant —— ——.

2d Lieutenant —— ——.

2d Lieutenant —— ——, judge-advocate.

The court then proceeded to the trial of Corporal —— ——, Company ——, —— Infantry, who was brought before the court, and having heard the order convening it read, was asked if he had any objection to being tried by any member named therein; to which he replied in the negative.

The members of the court and the judge-advocate were then duly sworn, and the accused was arraigned upon the following charge and specification:

Charge: —— ——.

Specification: —— ——.

To which the prisoner pleaded:

To the specification—"Guilty."

To the charge—"Guilty."

The judge-advocate announced that the prosecution here rested.

The prisoner stated that he had no testimony to offer or statement to make.

The accused and judge-advocate then withdrew, and the court was closed and finds the accused, Corporal —— ——, Company ——, —— Infantry.

Of the specification—"Guilty."

Of the charge—"Guilty."

The judge-advocate and the accused were then recalled and the court opened; and the judge-advocate stated that he had no evidence of previous convictions to submit.

(*or*) read the evidence of previous convictions hereto appended and marked A, B, etc.

The accused and judge-advocate then withdrew, and the court was closed and sentences him, Corporal—— ——, Company ——, —— Infantry, etc.

The judge-advocate was then recalled and the court at —— —. m., etc.

A—— B——,
Captain ——,
President.

C—— D——,
2d Lieut. ——,
Judge-Advocate.

(*A sine die adjournment will be added to the last case before the court, and the record of each case folded and indorsed in the same manner as that for a general court-martial.*)

SEC. II.—REMARKS ON THE RECORD.

1. The decision and orders of the post commander, properly dated and over his official signature, will follow immediately after the sentence, *adjournment*, or other final proceeding of the court in the case.

2. "The complete proceedings of a garrison or regimental court will be transmitted without delay by the post or regimental commander to department headquarters."[1]

RECORD OF A REGIMENTAL COURT-MARTIAL.[2]

CASE ——.

Proceedings of a regimental court-martial convened at —— ——, pursuant to the following order:

FORT ——, ——,
——, ——, 189—.

ORDERS, }
No. ——. }

A regimental court-martial will convene at this post at —— o'clock a. m., on ——, ——, 189—, or as soon thereafter as practicable, for the trial of Corporal —— ——, Company ——, —— Infantry, he having objected to trial by summary court.[3]

---

[1] Par. 956, A. R.

[2] The form of record for a regimental court differs from that for a garrison or a general court only in respect to the order convening the court.

[3] See page 71, par. 3, *supra*.

DETAIL FOR THE COURT.[1]

(*Complete record as in case of a garrison or general court.*)

FORMS FOR SENTENCES.

Form 1. *Reduction:* * * * "to be reduced to the ranks."[2]

Form 2. *Confinement:* * * * "to be confined at hard labor, under charge of the post guard, for —— (—) days."

Form 3. *Forfeiture:* * * * "to forfeit —— (—) dollars of his pay."[3]

Form 4. *Confinement and forfeiture:* * * * "to be confined at hard labor, under charge of the post guard, for —— (—) months, and to forfeit —— (—) dollars per month for the same period."

Form 5. *Dishonorable discharge and forfeiture of pay and allowances:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him."

Form 6. *Dishonorable discharge, forfeiture of pay and allowances, and confinement:* * * * "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor at such post (*or* in such penitentiary) as the reviewing authority may direct, for —— (—) years."

---

[1] See page 71, par. 2; also page 79, note 1, *supra*.

[2] See pages 52 and 53, and page 67, par. 13, *supra*.

[3] *Detention* of pay is no longer authorized; and under the acts of February 12, 1895 (28 Stat. L., 655), and March 16, 1896 (29 Stat. L., 60), pay can no longer be retained.

SUMMONS FOR A MILITARY WITNESS.

FORT —— ——,
—— ——, 189–.

To —— ——,
—— *Infantry.*

SIR: You are hereby summoned to appear on the —— of —— 189–, at —— o'clock —. m., before a general court martial, convened at —— ——, by Special Orders, No. ——, from ——, as a witness in the case of Private A—— B——, Co. ——, —— Infantry.

C—— D——,
—— ——,
Judge-Advocate.

SUBPŒNA FOR CIVILIAN WITNESS.

UNITED STATES
vs.
—— ——. } *Subpœna.*

The President of the United States, to —— ——, *greeting:*

You are hereby summoned and required to be and appear in person on the —— day of ——, 189–, at —— o'clock —. m., before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated —— ——, 189–, then and there to testify and give evidence as a witness for the —— in the above-named case. And have you then and there this precept.

Dated at ——, this —— day of ——, 189–.

—— ——,
Judge-Advocate of the Court-Martial.

SUBPŒNA DUCES TECUM.

(*Civilian witness.*)

UNITED STATES
vs.
—— ——. } *Subpœna.*

The President of the United States, to —— ——, *greeting:*

You are hereby summoned and required to be and appear in person on the —— day of ——, 189–, at —— o'clock —. m.,

before a general court-martial of the United States, convened at —— ——, by Special Orders, No. ——, Headquarters —— ——, dated ——, 189–, then and there to testify and give evidence as a witness for the —— in the above-named case; and you are hereby required to bring with you, to be used in evidence in said case, the following-described documents, to wit: —— ——. And have you then and there this precept.

Dated at ——, this —— day of ——, 189–.

—— ——,
Judge-Advocate of the Court-Martial.

RETURN OF SERVICE.

(*Indorsement of preceding writs.*)[1]

UNITED STATES

vs.

—— ——.

——————.

—— ——, 189–.

I certify that I made service of the within subpœna on —— ——, the witness named therein, by personally delivering to him in person a duplicate of the same at ——, on the —— day of ——, 189–.

—— ——.

—— ——, } *ss.*
—— ——. }

—— ——, being duly sworn, on his oath states that the foregoing certificate is true.

—— ——.

Subscribed and sworn to this —— day of ——, 189–, before me.[2]

—— ——.

---

[1] On the back of each form of writ are forms for both certificate and affidavit. It is not necessary to make the affidavit unless the witness be in default and it is proposed to issue process to compel attendance. In such case the affidavit can be filled out from the certificate made at the time of service.

[2] After service, as above indicated, the original subpœna should be at once returned to the judge-advocate of the court; if the witness can not be found, the judge-advocate should be so informed.

WARRANT OF ATTACHMENT.

UNITED STATES }
vs. }
—— ——. }

The President of the United States, to —— ——, *greeting:*

WHEREAS, —— ——, of —— ——, was on the —— day of ——, 189–, at ——, duly subpœnaed to appear and attend at ——, ——, on the —— day of ——, at —— o'clock —. m., before a general court-martial duly convened by Special Orders, No. ——, dated Headquarters Department of ——, —— ——, 189–, to testify on the part of the —— in the above-entitled case; and whereas he has failed to appear and attend before said general court-martial to testify as by said subpœna required, and whereas he is a necessary and material witness in behalf of the —— in the above-entitled case;

Now, therefore, by virtue of the power vested in me, the undersigned, as judge-advocate of said general court-martial, by section 1202 of the Revised Statutes of the United States, you are hereby commanded and empowered to apprehend and attach the said —— ——, wherever he may be found within the —— of ——,[1] and forthwith bring him before the said general court-martial assembled at —— ——, to testify as required by said subpœna.

—— ——,
—— ——,
Judge-Advocate of said General Court-Martial.

Dated —— ——,
—— ——, 189–.

INTERROGATORIES AND DEPOSITION.

INTERROGATORIES.

THE UNITED STATES } To ——. (*Name of officer who is to cause the deposition to be taken.*)
vs. }
—— ——. }

Interrogatories and cross-interrogatories to be propounded under the 91st Article of War to —— ——, a witness for the —— (*prosecution or defense*) in the above-

[1] State, Territory, or District where the court sits.

entitled case, now pending and to be tried before the general court-martial convened at —— ——, by paragraph ——, Special Orders, No. ——, Headquarters Department of ——, dated —— ——, 189—.

1st interrogatory: —— ——?

2d interrogatory: —— ——?

Etc.

1st cross-interrogatory: —— ——?

2d cross-interrogatory: —— ——?

Etc.

——— ———.[1]

——— ———.

DEPOSITION.

—— ——, the witness above named, being first duly sworn, doth depose and say for full answers to the foregoing interrogatories, as follows:

To the 1st interrogatory: —— ——.

To the 2d interrogatory: —— ——.

Etc.

—— ——.

(*Signature of witness.*)

Subscribed and sworn to before me this —— day of ——, 189—.

—— ——,[2]

—— ——.

—— ——, 189—.

I, —— ——, the officer designated to cause the deposition of the said —— —— to be taken on the foregoing interrogatories and cross-interrogatories, do certify that it was duly made and taken under oath.

—— ——,

—— ——.

---

[1] To be signed by the parties or party propounding the interrogatories and cross-interrogatories. If the witness is for the prosecution and there are no cross-interrogatories, the judge-advocate will certify that the defense had an opportunity to propound them. (See 91st A. W.) With the consent of the opposite party the deposition of a witness residing *within* the State, Territory, or district in which the court sits may be taken and read in evidence. A simple consent entered on this form will be sufficient.

[2] The jurat to be signed by the officer administering the oath, who will add his official designation. (See page 34, par. 3, *supra*.) If the oath is administered by a notary public, his seal will be affixed to the deposition.

ACCOUNT OF CIVILIAN WITNESS.

The United States to —— ——, *Dr.*

189—.	Expenses as witness before a military court convened under annexed order.	Dolls.	Cts.
For civilian witness NOT IN Government employ.	From —— ——, 189—, to —— ——, 189—		
	For mileage from —— —— to —— —— and return, being —— miles, at 5 cents per mile		
	For allowance while traveling to and from said court, between the above dates, inclusive, —— days, at $1.50 per day		
	For allowance while in attendance on said court, from —— ——, 189—, to —— ——, 189—, as per judge-advocate's certificate hereon, —— days, at $1.50 per day		
	Total		
For civilian witness IN Government employ.	From —— ——, 189—, to —— ——, 189—		
	For actual cost of travel from —— —— to —— —— and return, as per memorandum annexed		
	For actual cost of meals and rooms while traveling to and from said court, between above dates, inclusive, —— days		
	For actual cost of meals and rooms while in attendance on said court, from —— ——, 189—, to —— ——, 189—, as per judge-advocate's certificate hereon, —— days		
	Total		

I solemnly swear that the above account is correct; that I have not been furnished with Government transportation for any part of the journey for which travel fare is charged, and that the journey was performed without unnecessary or avoidable delay.

—— ——, *Witness.*

Sworn to and subscribed before me at ——, ——, on this —— day of ——, 189—.

—— ——,

—— ——,

Judge-Advocate.

Received this —— day of ——, 189—, of Major —— ——, paymaster, U. S. Army, —— dollars, in full of the above account, by check No. ——, on ——.

—— ——, *Witness.*

[In duplicate.]

JUDGE-ADVOCATE'S CERTIFICATE.

(*On back of form.*)

I certify that —— ——, a civilian, has been in attendance as a material witness from —— ——, 189—, to —— ——, 189—, inclusive, before a general court-martial duly convened at this place, and that he was duly summoned thereto from —— ——.

—— ——,

—— ——,

Judge-Advocate.

Place, —— ——.
Date, —— ——, 189—.

(NOTE.—*If the witness be "in Government employ," these words will be inserted in the above certificate after the word "civilian."*)

RULES GOVERNING ACCOUNTS OF CIVILIAN WITNESSES.

The Paymaster-General is, under paragraphs 962–966, Army Regulations, governed by the following rules in the treatment of vouchers for travel expenses of civilian witnesses before military courts:

1. The voucher must be accompanied by a copy of the order convening the court, with the original summons in the case, or, if the attendance was authorized by military order, by the original order. In the absence of the original order or summons, certified copies of the same will be accepted.

2. The affidavit of the witness (on face of voucher) and the judge-advocate's certificate (on back of voucher) are required in all cases. The voucher and all accompanying papers must be in duplicate.

3. The items of expenditure authorized in paragraphs 962 and 963, Army Regulations, will be set forth in detail in a memorandum which will be attached to each voucher. No other items will be allowed. The correctness of the items will be attested by the affidavit of the witness, to be made, when practicable, before the judge-advocate.

4. The certificate of the judge-advocate will be evidence of the fact and period of attendance, and will be made on the voucher.

5. Upon execution of the affidavit and certificate the witness will be paid upon his discharge from attendance, without waiting for completion of return travel. The charges for return journeys will be made upon the basis of the actual charges allowed for travel to the court.

6. A civilian witness *not in* Government employ will receive 5 cents a mile for going from his place of residence to the place of trial or hearing and 5 cents a mile for returning, distances to be calculated by the shortest usually traveled route. He will also receive $1 50 for each day actually and unavoidably consumed in attendance upon the court under the summons. No other items will be allowed.

7. Civilian witnesses *in* Government employ will receive as follows:

(*a*) Amount actually paid for cost of transportation or travel fare.

(*b*) Amount actually paid for cost of transfers to and from railway stations, not exceeding 50 cents for each transfer.

(*c*) Amount actually paid for cost of one double berth in sleeping cars or on steamers where an extra charge is made therefor.

(*d*) The *actual cost* of meals and rooms at a rate *not exceeding* $3 per day for each day actually and unavoidably consumed in travel or in attendance upon the court.

8. Travel must be estimated by the shortest available usually traveled route; the charge for cost of travel (items *a*, *b*, *c*) by established lines of railroad, stage, or steamer should not exceed the usual rates in like cases, the time occupied to be determined by the official schedules, reasonable allowance being made for customary unavoidable detention.

9. The summons, or order for attendance, will be presumed to show in all cases, by indorsement or otherwise, if transportation in kind or commutation or rations has been furnished. Transportation in kind will, for any

distance covered thereby, be a bar to payment of item *a*. Indorsements of transportation furnished will be scrutinized to ascertain if any part of item *c* has been included.

Commutation of rations will be a bar to payment of item *d*.

Transportation and commutation of rations will be a bar to any payment.

10. No per diem allowance can be made where the attendance upon the court does not require the witness to leave his station. (This applies to civilians *in* Government employ.)

11. Compensation to civilians in or out of Government employ, for attendance upon *civil courts*, is payable only by the civil authorities.

12. If a witness is *in* Government employ the judge-advocate will state the fact. If it does not appear in the certificate or elsewhere in the papers, and is not known to the paymaster, it will be assumed that the witness is *not in* Government employ.

13. Whenever needed, judge-advocates can procure blank accounts for civilian witnesses from any army paymaster or from the Paymaster-General's Office. The accounts may then be made out upon a witness's discharge from attendance. If no paymaster be present at the place where the court sits, the accounts, authenticated as above directed, may be transmitted to any paymaster for payment, with confidence that the witness will receive his pay without unnecessary delay.

FORM FOR SPECIAL ORDERS.

HEADQUARTERS DEPARTMENT OF ——,

——, ——, 18—.

SPECIAL ORDERS, No. ——.

* * * * * * *

3. Recruit —— ——, General Service, U. S. Army, having been tried by a general court-martial convened at —— ——, and found guilty of fraudulent enlistment, in

violation of the 62d Article of War, was sentenced "to be dishonorably discharged the service of the United States, forfeiting all pay and allowances due him, and to be confined at hard labor at such post as the reviewing authority may direct, for the period of one (1) year."

The sentence is approved and will be duly executed.

—— is designated as the place of confinement, to which place the prisoner will be sent under proper guard.

By command of Brig. Gen. —— ——.

—— ——,

Assistant Adjutant-General:

HABEAS CORPUS BY STATE COURT.

RETURN TO WRIT.

FORM 1.—*Person held under warrant of attachment.*

In re —— ——. (*Name of party held.*)—Writ of habeas corpus—return of respondent.

To the ——.[1]

The respondent, Major —— ——, —— U. S. Infantry, upon whom has been served a writ of *habeas corpus* for the production of —— ——, respectfully makes return and states that he holds the said —— —— by authority of the United States, pursuant to a warrant of attachment issued under section 1202 of the Revised Statues of the United States by a judge-advocate of a lawfully convened general court-martial and duly directed to him, the said respondent, for execution; that he is diligently and in good faith engaged in executing said warrant of attachment, and that he respectfully submits the same for the inspection of the court, together with the original subpœna and proof of service of the same, and a certified copy of the order convening said general court-martial.

And said respondent further respectfully makes return that he has not produced the body of the said —— ——,

---

[1] "Court" or "judge," as the case may be.

because he holds him by authority of the United States, as above set forth, and that —— ——[1] is without jurisdiction in the premises, and he respectfully refers to the decisions of the Supreme Court of the United States in Ableman *vs.* Booth, 21 Howard, 506, and Tarble's Case, 13 Wallace, 397, as authority for his action, and prays —— ——[1] to dismiss the writ.

—— ——,
Major, —— *U. S. Infantry.*

Dated —— ——,
—— ——, 18—.

FORM 2.—*Person held as a deserter.*

—— —— respectfully makes return and states that he holds the said —— —— by authority of the United States, as a deserter from the U. S. Army, under circumstances as follows:

That the said —— —— was duly enlisted as a soldier in the service of the United States at —— ——, on —— ——, 189—, for a term of —— years.

That the said —— —— deserted said service at ——, on —— ——, 189—, and remained absent in desertion until he was apprehended at —— ——, on —— ——, 189—, by —— ——, and was thereupon committed to the custody of the respondent as commanding officer of the post of —— ——.

That charges for said desertion, a copy of which is annexed, have been preferred against the said —— ——, and that he will be brought to trial thereon as soon as practicable before a court-martial to be convened by the commanding general of the department of ——.
(*or*) convened by Special Orders No. ——, dated Headquarters Department of ——, 189—, a copy of which order is hereto annexed.

And the said respondent further makes return, etc.
(*Conclude with last paragraph of form 1.*)

---

[1] "This court" or "your honor," as the case may be.

HABEAS CORPUS BY UNITED STATES COURT.

RETURN TO WRIT.

(*Make return as in case of writ by a State court, except as to last paragraph, for which substitute as follows:*)

In obedience, however, to the said writ of *habeas corpus* the respondent herewith produces before the court the body of the said —— ——, but for the reasons set forth prays this honorable court to dismiss the said writ.

—— ——,
Major, —— *U. S. Infantry.*

Dated ——, ——,
—— ——, 189—.

INDEX.

Abatement of Punishment: Page.
For good conduct in confinement..... 61

Absence:
Of member from meeting of court..... 21, 110, 111
See *Department Commander.*

Absence Without Leave:
Effect of conviction of, on reward for apprehension..... 43
Finding of, under charge of desertion..... 39
From camp, 1 mile..... 80
From duty as company or hospital cook..... 49
From fatigue, extra, or special duty..... 49
From parade, etc., forms for charges..... 102
From parade, etc., limit of punishment..... 47
From parade, etc., offense of..... 79
From troop, etc., form for charge..... 102
From troop, etc., limit of punishment..... 47
From troop, etc., offense of..... 79

Abuse of Authority:
By noncommissioned officer, limit of punishment..... 59

Accounts:
Of witness, form for..... 132
Of witness, rules governing..... 133–135
Of witness, to deposition..... 35

Accoutrements:
Accountability for..... 75
Selling, losing, etc., form for charge..... 101
Selling, losing, etc., limits of punishment..... 45, 46
Selling, losing, etc., offense of..... 76

Accused:
Arraignment of..... 29, 112
Challenge by, how allowable..... 25
Challenge by, how recorded..... 111, 112
Entitled to counsel before general court..... 24
Entitled to have witnesses summoned..... 31

Accused—Continued. Page.
Judge-advocate, how far counsel 22
Stands mute 30
To be advised of his rights 22
Uniform of, before court 19
Will not appear in irons 19

Accuser:
Can not convene general court 12
Can act as summary court 65
Challenge of member on ground of being 26
Should not act as judge-advocate 26

Acquittal:
Effect of, on reward for apprehension 42
Finding in case of virtual 40
Form for recording 118

Acting Assistant Surgeon:
Ineligible as member of court 10

Action on Proceedings. See *Proceedings.*

Additional Charges:
Can not be introduced after arraignment, etc 19

Adjournment:
Daily, signed by judge-advocate 23
Final, signed by president and judge-advocate 23

Advising Desertion:
Offense of 82

Alarms:
False, offense of occasioning 80

Ammunition:
Offense of purchasing, from soldier, etc 85
Offense of wasting, selling, etc 76

Appeal:
From regimental to general court 79

Appointing Authority. See *Convening Authority.*

Arms:
Accountability for 75
Offense of casting away 80
Offense of making false return of 74
Offense of selling, losing, etc 76
Offense of selling, losing, etc., limits of punishment 45, 46

Arraignment:
Accused and judge-advocate stand 29
Accused not to be in irons at 19
Accused stands mute at, action by court 30
Additional charges not introduced after 19

Arraignment—Continued. Page.
Form for recording 112
Procedure for 29

Arrest:
Applications of officers in 7
Breach of, by officers 86
General provisions regarding 9
Of deserters, reward for 42
Of officers 6, 86
Of soldiers 8
Protracted, a ground for mitigation 59

Arson:
Offense of, in time of war 83

Articles of War:
Armies of United States governed by 73
Officers shall subscribe 73
Read once in six months to troops 97
Read to recruits 73

Assault with Intent to Kill:
Form for charge 105
Limit of punishment 48

Assembling of Court:
Procedure on 19

Attachment of Witness. See *Witness* and *Warrant of Attachment.*

Attendance of Witness. See *Witness.*

Authentication of Proceedings. See *Proceedings.*

Authority:
Abuse of, by noncommissioned officer 50

Autrefois Acquit:
Plea of 30

Ball and Chain:
As punishment 42
Punishment by, in extreme cases only 42
Report of use to department commander 60

Branding of Soldiers:
Forbidden 92

Breach of Arrest:
By officer 86

Bread and Water Diet:
Confinement on, as punishment 41, 42

Bribes:
Officer taking 74

Burglary: Page.
Offense of, in time of war 83
Under 62d Article, form for charge 106
Under 62d Article, limit of punishment 48

Cadets. See *Military Academy.*

Camp:
Introducing liquor into, limit of punishment 49
Lying out of, without leave 79
Retainers of, jurisdiction over 14
Soldiers one mile from, without leave 80
Violence to persons bringing provisions to 83

Candidate for Promotion:
Punishment of 42
Triable by general court only 14

Capital Crime:
Desertion in time of peace not a 35
Meaning of 35

Captured Stores:
Disposition of 75

Cashiering:
Meaning of 74

Certificates:
Penalty for signing false 76

Challenge (*Of member of court*):
Absent during evidence, not to sit 26
Court determines validity of 25
Grounds for 26
In absence of, member how excused 26
Judge-advocate not challengeable 26
Record in case of 111, 112
Summary and field officer's courts not subject to 25

Challenge (*To fight duel*):
Duty to refuse 78
Sending, accepting, etc 78
Upbraiding for refusing 78

Chaplains:
Not detailed as members of courts 10

Charges:
Accompanied by what 18
Act charged under two or more forms 17
Additional 19
Consideration of, by post commander 18
Correction of, by judge-advocate 22
Delay in trial by summary court on 66

Charges—Continued. Page.
Forms for 101
Instructions for drawing 15, 16
Investigation of 18
Joint, when 16
Prisoners without written, when released 9
Requisites of 15
Service of, upon officer arrested 7
Specifications, how drawn 17
Specifications, not in alternative 17
Striking out, withdrawing, etc 18
To whom submitted 18
When and by whom submitted 9

Civil Court:
Can not review proceedings of military 12
Military, ordinarily, gives precedence to 13
Previous convictions by, inadmissible 40

Civil Crime:
Act as being both military offense and 13, 15

Civil Magistrate:
Delivery of accused officer or soldier to 84

Clemency:
Certain applications for 58

Clothing:
Form for charge for selling 101
Limit of punishment for selling 46
Limit of punishment for losing or spoiling 46
Offense of selling, losing, etc 17, 76

Closed Session:
Judge-advocate excluded 23

Company Commander:
Arrest or confinement of soldiers reported to 9
Copy of summary court record furnished to 69

Commanding Officer:
Disrespect to, limit of punishment 46
Disrespect to, offense of 77
Instructions to, regarding summary courts 68
May authorize departure of certain witnesses 36
Must investigate charges 18
Power to order court of inquiry 95
Refers or forwards charges 18
Report of prisoners to 9

Command:
Suspension from, as punishment 41
When different corps join 122

Page.

Commands:
Officers to keep good order in 82

Commutation of Punishment:
Power of reviewing authority 58

Company Cook:
Limit of punishment for absence from duty as 49
Limit of punishment for drunkenness on duty as 47

Composition of Courts-Martial. See *Courts-Martial.*

Conduct to the Prejudice, etc.:
Forms for charges 104
Instruction regarding charges 15
Limits of punishment 48

Conduct Unbecoming, etc.:
Instructions regarding charges of 15

Confinement Before Trial:
Enlisted men in, how designated 8
General provisions regarding 9
Long, a ground for mitigation 59
Of officers 7
Of soldiers 8
Report of, to soldier's company commander 9

Confinement After Trial:
Abatement allowed 61
Enlisted men in, how designated 60
Forms for sentence to 127
General prisoners examined when released 62
On bread and water diet 42
Personal effects of escaped prisoners 61
Prisoners forwarded to place of 60
Prisoners put in irons, report made 60
Second sentence to, begins when 62
Sentence to, begins when 61
Separation of prisoners in 60
Solitary, duration of 53

Constitution of Courts-Martial. See *Courts-Martial.*

Contempt:
Courts-martial may punish for 90

Continuance. See *Postponement.*

Convening Authority:
Control of, over court 12
Decision of, as to number of members 11
Effect of absence on appointing power 12
Of garrison court 69

Convening Authority—Continued. Page.
Of general court 11, 12
Of regimental court 71
Of summary court 65
Prosecutor can not convene general courts 12
Report to when court is below minimum 11
The President as 11
The Superintendent U. S. Military Academy as 12

Convening Order:
For garrison court 124
For general court 109
For regimental court 126

Convictions. See *Previous Convictions.*

Correction of Proceedings. See *Revision of Record.*

Correspondence:
With the Judge-Advocate-General 64
With the enemy 81

Counsel for Accused:
Arguments of, oral or written 24
By whom detailed 24
Duties of 24
Introduction of, before court 111
Judge-advocate, how far 21
Questions of, oral or written 24

Courts-Martial:
All troops subject to trial by 13
Assembling of 19
Authority over charges 18
Can not excuse member 26
Can not order *nolle prosequi* 18
Civil courts can not review proceedings of 12
Classification of 11
Composition of 10
Control of convening authority over 12
Hours of session 91
Inferior 11
Jurisdiction of, as affected by act of accused 14
Jurisdiction of, over acts both civil crimes and military offenses 13, 15
Jurisdiction of, derived from acts of Congress 12
Jurisdiction of, exclusive over military offenses 13
Jurisdiction of, how extended in time of war 14
Jurisdiction of, not affected by territoriality 13
Jurisdiction of, over offenses 13

Courts-Martial—Continued. Page.

Jurisdiction of, over persons 13
Jurisdiction of, statute of limitation as affecting 31
Jurisdiction of, when ended 13
May punish for contempt 90
Object of, as military tribunal 6
Organization of 19

Garrison Courts-Martial—
Appointed in what commands 69
Appointed when 70
Composition, etc., of 69
Disposition of proceedings of 64
Form for order and record 124
Limit of punishing power 70

General Courts-Martial—
Appeal from regimental court to 79
Closed session of 23
Composition of 10
Constituted by whom 11, 12
Disposition of proceedings of 63
Form for order and record 109
Jurisdiction of 14
Procedure of 20
Record of proceedings 55
Record of, copy furnished accused 64, 95
Revision of record 56

Regimental Courts-Martial—
Composition, etc., of 70
Disposition of proceedings of 64
Form for order and record 126
Under 30th Article of War 79

Summary Courts—
Accuser can act as 65
Act establishing 99
Composition, etc., of 65
Copies of record, furnished company commanders 69
Delay in trial by 66
Discretion as to trial by 66
General instructions regarding 68
Hours of session 69
Jurisdiction of 66
May be held on Sunday in emergency 69
Monthly report of cases tried, form for 122

Courts-Martial—Continued.
Summary Courts—Continued. Page.
Names of officers who act as, reported 69
Not challengeable 25
Power of 66
Previous convictions considered by 67
Procedure of 67
Punishing power 67
Record form for 121
Report of cases tried by, to be made monthly 64
Reviewing authority of 68

Courts of Inquiry:
Authentication of proceedings of 96
How ordered 95
Members of 95
Oath of members and recorder 95
Object of, as a military tribunal 6
Opinion of, when given 95
Record of, as evidence 96
Witnesses before 95

Cowardice:
Offense of 80
Sentence for, how published 92

Crime:
Act as being both military offense and civil 13, 15
Capital, desertion in time of peace not a 35
Capital, offender delivered to civil magistrate 84
During rebellion, etc 83
Officers accused of, subject to arrest 86
Of fraud against the United States 84-86
Soldiers accused of 87
To the prejudice, etc 86

Criminals:
Enlistment of, prohibited 73

Customs of War:
As affecting punishment 52
As part of unwritten military law 6

Days:
Meaning of word in sentence 61

Death, Sentence of:
Confirmation of 93
Suspension of 58, 94
Vote upon 54

Deceased Soldiers: Page.
Disposition of effects of 96

Defects in Proceedings. See *Revision of Record.*

Defense:
How far assisted by judge-advocate 23

Delay:
In trial by summary court 66
When and by whom granted 28

Department Commander:
As accuser or prosecutor 12
Authorized to convene courts 12
Authorized to review proceedings 57
Can not delegate his function as reviewing authority 57
Charges forwarded to 18
Effect of absence of, on appointing power 12
May permit trial of sergeants by inferior courts 15
Report of irons on prisoner to 60

Deposition:
Duty of officer ordered to obtain 34
Form for 130, 131
May be taken before court assembles 34
Oath to, by whom administered 34
Pay accounts of witness giving 35
Procedure to obtain 34
Submission to court 35
When admissible 33, 91, 131
When not admissible 33, 35

Deprivation of Privileges:
Of "candidate for promotion" 42

Deserter:
Apprehended or surrenders, action taken 44
Enlistment of, prohibited 73
From Navy or Marine Corps 31
Harboring, offense of 82
Surgeon's report to accompany charges against 18
To serve full term 81
Who is apprehended, limit of punishment 44
Who surrenders, limit of punishment 44

Desertion:
After tendering resignation 81
By enlistment in another regiment 82
Evidence of, after plea of guilty 29, 30
Form for charge of 104

Desertion—Continued. Page.
In time of peace, not a capital offense 35
Limits of punishment 44, 45
Offense of 81
Offense of advising or persuading 82
Previous convictions of 45
Statute of limitation for 31, 92

Discharge, Dishonorable:
Form for sentence of 127
Of an officer for cowardice or fraud 92
Of post noncommissioned staff and hospital steward 53
On account of previous convictions 52
On account of conviction of two or more offenses 52
Postponement of date fixed by sentence 59

Discharge from Service:
How made 74

Dismissal:
By court-martial, appointed by division or brigade commander 93
For cowardice, etc., where published 92
In time of peace, sentence confirmed 93
Of officers 93
Suspension of sentence of 58, 94

Disobedience of Orders:
Involving defiance of noncommissioned officer 49
Of an officer, form for charge 102
Of an officer, offense of 77
Of an officer, etc., quelling fray, limit of punishment 46
Of an officer, etc., quelling fray, offense of 77
Of a noncommissioned officer, form for charge 105
Of a noncommissioned officer, offense under 62d Article 102
Of a sentinel, limit of punishment 50
Simple neglect of standing order 102

Disorderly Conduct in Quarters:
Limit of punishment 50

Disorders and Neglects:
Offenses under 62d Article 86

Disposition of Records:
Of general courts 63
Of inferior courts 64

Disrespect:
To commanding officer, limit of punishment 46
To commanding officer, offense of 77
To sentinel, limit of punishment 50
Regarding President, etc., offense of 76

Divine Service: Page.
Irreverent behavior at..... 82
Officers, etc., recommended to attend..... 82

Double Amenability:
In case of disorder near post..... 49
To civil and military jurisdictions..... 13, 15

Drunkenness:
At guard mounting..... 16
At post or in quarters, limit of punishment..... 49
Not on duty, offense under 62d Article..... 16
On duty, offense under 38th Article..... 16, 80
On duty, form for charge..... 103
On duty, limits of punishment..... 47

Drunkenness and Disorderly Conduct:
Form for charge..... 105
Near post causing conviction by civil authorities..... 49
Limits of punishment..... 49, 50

Duel:
Challenge to fight..... 78
Sending, accepting challenge, etc..... 78
Upbraiding for refusing challenge..... 78

Duty:
Conniving at hiring..... 80
Hiring..... 80

Effects:
Of deceased officers and soldiers..... 96, 97
Of escaped prisoners..... 61

Embezzlement:
Offense under 62d Article, limit of punishment..... 49
Of United States property..... 49, 84
Specifications for, to state value of property..... 49

Enemy:
Correspondence with..... 81
Misbehavior before..... 80
Relieving, harboring, etc..... 81
Trading with..... 97, 98

Enlistment:
Fraudulent, definition of..... 13
Fraudulent, forms for charges..... 104, 107
Fraudulent, limits of punishment..... 49
Fraudulent, offense under 62d Article..... 86
Fraudulent, triable by general court only..... 14
Oath of..... 73
Of certain classes prohibited..... 73
Unlawful, penalty for making..... 74

Escape of Prisoner: Page.
Disposal of effects of prisoner..... 61
Effect on jurisdiction of court..... 14
Form for charge for suffering..... 105
Limit for suffering..... 50

Evidence:
Common law rules of, ordinarily followed 38
Proceedings of court of inquiry as 95

Examination of Witness. See *Witness.*

Experts:
Employment and pay of..... 36

Exposure of Person:
Limit of punishment..... 50

False Alarms:
Penalty for creating..... 80

False Certificate:
Penalty for signing 76

False Muster:
Penalty for making 74, 76
Penalty for signing, etc., roll containing..... 76

False Report:
By noncommissioned officer, limit of punishment 50

False Return:
Penalty for making 74

False Swearing:
Distinguished from perjury..... 106
Limit of punishment..... 48

Fees of Witness. See *Witness.*

Finding:
In case of virtual acquittal..... 40
Of guilty of lesser kindred offense..... 39
Of guilty of part of specification 39
Of guilty under general instead of specific article 40
Reviewing authority can not change 39

Fine:
As a punishment..... 42
See *Forfeiture of Pay.*

Flogging:
Prohibited 42, 92

Forcing a Safeguard:
Offense of 83

Forfeiture of Pay: Page.
As a punishment 42
Can be made only in favor of United States 42
For irreverent behavior 82
For profanity 82
Forms for sentences to 127
Of amount paid for apprehension 42, 43
Remission of sentence 59

Forgery:
Under 60th Article, limit of punishment 48
Under 62d Article, limit of punishment 48

Former Trial:
Plea of 30

Forms:
For account of civilian witness 132
For charges 101
For interrogatories and deposition 130, 131
For monthly report of summary court cases 122
For record book, for summary court 121
For record of garrison court 124
For record of general court 109
For record of regimental court 126
For return to habeas corpus of State court 136
For return to habeas corpus of United States court 138
For revision of record, general court 119
For sentences 127
For special order publishing proceedings 135
For statement of service 108
For subpœna *duces tecum* 128
For subpœna for civilian witness 128
For summons for military witness 128
For surgeon's report on alleged deserter 108
For warrant of attachment 130

Fort Leavenworth, Kans.:
Penitentiary for general prisoners 58

Fraud:
Offenses of, under 60th Article 84
Officer dismissed for 92

Fraudulent Enlistment. See *Enlistment.*

Frays:
Power to quell 77
Refusing to obey officer, etc., quelling, limit of punishment. 46

Gambling:
Encouragment of, by noncom. officer, limit of punishment.. 50

Garrison Court-Martial. See *Courts-Martial.*

Garrison Prisoners: Page.
Who designated as 60

General and Special Orders:
As part of written military law 6
Publishing proceedings 59

General Court-Martial. See *Courts-Martial.*

General Officers:
Power of, to convene courts 12
Sentences regarding 94

General Prisoners:
Examined when released 62
Who designated as 60

Good Conduct in Confinement:
Abatement for 61

Good Order:
Officers to keep, in their commands 83

Grievances:
Of officers 78
Of soldiers 79
Redress for 79

Guard:
Drunkenness on, form for charge 103
Drunkenness on, limit of punishment 47
Drunkenness on, offense of 80
For prisoners conveyed to place of confinement 60
Member of, drinking with prisoner, limit of punishment 50
Prisoners delivered to, charges against 9
Prisoners under charge of, when released 9
Quitting, form for charge 103
Quitting, limit of punishment 48
Quitting, offense of 80, 81

Guard Duty:
As a punishment, forbidden 42

Guard Mounting:
Drunk at, limit of punishment 48

Habeas Corpus:
Forms for return to writ of 136-138
Officer served with, action required 32, 62
Writ issued by State court 33, 62, 63
Writ issued by United States court 32, 63

Harboring:
Deserter 82
Enemy 81

Hard Labor: Page.
As a punishment..... 42
Forms for sentences to..... 127
Power of inferior court to award..... 89

Hiring Duty. See *Duty.*

Horse:
Limit of punishment for losing or spoiling..... 46
Limit of punishment for selling..... 45
Offense of selling, etc..... 76

Hospital Cook:
Limit of punishment for absence from duty as..... 49

Hospital Steward (*Noncommissioned officer above rank of corporal*):
Arrest of..... 8
Confinement of..... 8
Jurisdiction over..... 14
May be discharged, but not reduced..... 53
Punishment of..... 40, 53

Hours of Session:
Article prescribing..... 91
Not to interfere with routine duties..... 19
Of summary court..... 69
Record of..... 110
Without regard to hours..... 19

Indecent Exposure:
Limit of punishment..... 50

Inferior Courts-Martial:
Courts so designated..... 11
Disposition of records of..... 64
Instructions regarding..... 11
Punishing power..... 90

Inquiry, Courts of. See *Courts of Inquiry.*

Insane or Intoxicated Person:
Enlistment of..... 73

Insubordination:
Toward noncom. officer, limit of punishment..... 49

Interpreter:
Employed by order of court..... 25
Oath of..... 28
Pay of..... 25
Record relating to..... 112

Interrogatories and Deposition. See *Deposition.*

Introducing Liquor into Camp, etc.:
Limit of punishment..... 49

Irons on Prisoner: Page.
As a punishment 42
Removed on arraignment 19
Reported to department commander 60

Irreverent Behavior:
At divine service 82

Joint Charges:
When allowed 16

Judge-Advocate-General:
Applications to, for copies of records 64
Correspondence with 64
Proceedings in certain cases forwarded direct to 63
Revises and preserves records of general courts 63

Judge-Advocate of Court-Martial:
Appointed by whom 19, 88
Authorized to administer certain oaths 26, 91
Correction of charges by 22
Duties of 21, 111
New judge-advocate, record regarding 55
Not challengeable 26
Oath of 27
Subpœnas by, how sent 31
Subscribes daily record, etc 23
Warrant of attachment issued by 32
Withdraws when court is closed 23
Witnesses summoned by 31

Judge-Advocate of Department:
Authorized to administer certain oaths 28
Custodian of records of inferior courts 64

Jurisdiction of Courts-Martial. See *Courts-Martial.*

Larceny:
By soldier from civilian 16
Forms for charges of 104, 106
Offense of, in time of war 83
Offense under 62d Article, limits of punishment 49
Specifications for, to state value of property 49

Law of Hostile Occupation:
Definition of 5

Laws of the Land:
Municipal ordinances, part of 84

Leaving Post:
Form for charge 103
Offense of 80

Lewd Exposure:
Limit of punishment 50

Limitation, Statute of: Page.
Advantage of, how taken 31
Effect of, on jurisdiction 31

Limits of Punishment. See *Maximum Limits of Punishment.*

Line Officer:
As summary court 65
On regimental or post staff duty 65

Liquor:
Introducing into camp, etc., limit of punishment 49

Log:
Punishment by carrying heavy, prohibited 42

Losing or Spoiling:
Accoutrements or clothing, through neglect, limit of punishment 46
Accoutrements or clothing, through neglect, offense of 76
Horse or arms, through neglect, limit of punishment 46
Horse or arms, through neglect, offense of 76

Loss of Rank:
As a punishment 41

Lying out of Quarters:
Offense of 79

Manslaughter:
Offense of, in time of war 83
Under 62d Article, limit of punishment 48

March:
Different corps, etc., on the 96

Marine Corps:
Deserter from 31
Officers of, as members of courts 10

Marking:
As a punishment, forbidden 42, 92

Martial Law:
As a domestic fact, definition of 5
As applied to the Army, definition of 5

Maximum Limit of Punishment:
By whom prescribed 44
Effect of previous convictions on 51, 52
For desertion 45
For offenses in general 51
Offenses not mentioned 51
Of noncommissioned officer 52
Of soldier convicted of several offenses 52

Mayhem:
Offense of, in time of war 83

Medical Officer: Page.
Arrest of 7
Report of, in case of deserter 18
Report of, in case of general prisoner 62
Report of, form, for 108

Members of Courts-Martial:
Absent, communicate cause to judge-advocate 21
Absent during evidence, not to sit 26
Assembling of 19
Behavior of 20
Court can not excuse from sitting 26
Duty of judge-advocate to ascertain cause of absence of 111
Liable for other duty 21
Named in order of rank 20
New member 55
Oath of 26, 27
Questions by, how recorded 114
Quorum for general court 11
Seating of 20
Uniform of 19
Votes of, how given 21
Who are eligible as 10
Who believe themselves disqualified 26

Member of Guard:
Drinking liquor with prisoner, limit of punishment 50

Military Academy:
Cadets not triable by inferior courts 14
Professors not eligible as members of courts 10
Superintendent may convene courts for cadets 12

Military Commission:
Object of, as military tribunal 6

Military Discipline:
Conduct to prejudice of, forms for charges 104
Conduct to prejudice of, how charged 16
Conduct to prejudice of, limits of punishment 48
Crimes, disorders, and neglects to the prejudice of 86

Military Government:
Definition of 5

Military Jurisdiction:
How subdivided 5
Source of 6

Military Law:
Definition of 5
Sources of 5, 6

Military Tribunals: Page.
Classification of 6

Militia:
Not triable by officers of Regular Army 10
Officers as members of courts 10
Officers in United States service, rank of 96

Minimum:
Report if court is below 11

Minors:
Offense of enlisting, without consent of parents 73

Misbehavior before Enemy:
Offense of 80

Misconduct in Time of War:
Abandoning post, etc 80
Casting away arms, etc 80
Changing parole or watchword 81
Correspondence with enemy 81
Cowardice 80
Disclosing parole or watchword, etc 81
False alarms 80
Forcing safeguard 83
Intelligence to enemy 81
Misbehavior before enemy 80
Pillage 80, 81
Quitting color 80, 81
Relieving or harboring enemy 81
Various crimes 83

Mitigation of Sentence:
Of general court 57, 58
Of prisoner long confined before trial 59
Of summary court 68

Motion to Strike Out:
Action of court in case of 18

Municipal Ordinances:
Part of "laws of the land" 84

Murder:
Offense of, in time of war 83

Muster, False:
Offense of making 74, 76
Offense of signing, etc., roll containing 76

Mustering:
Persons not soldiers as soldiers 74
Receiving money, etc., for 74

Mutiny: Page.
Beginning, exciting, etc. 77
Compelling commander to surrender 81
Failing to report and suppress 77

Navy:
Deserter from 31

Neglect of Duty:
By sentinel, limit of punishment 50
Causing damage to public property 76
Form for charge 104
In failing to care for captured property 75
In failing to surrender criminals 84
To the prejudice of good order, etc 86

New Member:
If evidence in, not to sit 26
Record regarding 55

Noisy or Disorderly Conduct in Quarters:
Limit of punishment 50

Nolle Prosequi:
Court can not order 18
Judge-advocate can not enter 22

Noncommissioned Officer:
Abuse of authority by, limit of punishment 50
Arrest by, under 24th Article 77
Arrest of 8
Confinement of 8
Disobedience of orders of, charged under 62d Article 102
Disobedience of orders of, form for charge 105
Disobedience of orders of, limit of punishment 49
Encouraging gambling, limit of punishment 50
Insubordination to, limit of punishment 49
Jurisdiction over, by general court 14
Jurisdiction over, by inferior court 15
Limit of punishment of 50
Making false report, limit of punishment 50
Punishments for 42
Reduction of, by summary court 68
Reduction of, post noncommissioned staff, etc 53
Using threatening or insulting language to 49
Using violence to, etc., when quelling quarrel 46

Oaths:
Court must be sworn at each trial 26
For purposes of military administration 27, 28, 91
Of enlistment 73
Of members, judge-advocate, etc., of courts-martial 26, 27, 28

Oaths—Continued. Page.
Of members, recorder, etc., of courts of inquiry 95
Procedure during administration of 27
Profane, penalty for using 82
To deposition 34

Objection:
To question how recorded 114

Offense:
Act as both civil crime and military 13, 15
Against person or property of civilian 83, 84
Joint charges for 16
Jurisdiction as regards 14
No person tried twice for same 92
Not capital and to the prejudice, etc 86
Ordinary, limit of punishment for 44
Penitentiary 43
Statute of limitation for 31

Officer:
Charged with crime to be arrested 6, 86
In arrest furnished copy of charges 7, 87
Jurisdiction over retired 13
Meaning of word in Articles of War 73
To keep good order in his command 82

Officer of Day:
Duties respecting prisoners and charges 9

Orders:
Convening. See *Convening Order.*
General and special publishing proceedings 59
Neglect to comply with standing 102
Of an officer, disobedience of 77
Of an officer, disobedience of, form for charge 102
Of a noncommissioned officer, disobedience of 102, 105
Trials by summary court not published in 67

Organization:
Of courts-martial 19

Pardon:
By the President 57
By the reviewing authority 57, 68, 94
Of penitentiary prisoners 58

Parole:
Penalty for changing 81

Pay:
False certificate relating to, penalty for signing 76
Forfeiture of, as a punishment 42
Forfeiture of, only in favor of United States 42

Pay—Continued. Page.
Of civilian witness, giving deposition..... 35
Of civilian witness, refusing to testify..... 37
Of civilian witness, testifying..... 36
Of interpreter..... 25
Of officer, suspension of..... 92
Of reporter..... 25
Of soldier awaiting sentence..... 59
Of soldier can not be assigned by sentence..... 42
Of soldier, detention and retention not authorized..... 127

Pay Department:
Civilian witness paid by 36, 37
Form of, for account of civilian witness..... 132
Instructions regarding payment of witness..... 133
Interpreter and reporter paid by..... 25

Penitentiary:
Clemency for prisoner confined in..... 58
Confinement in, limit of..... 43
Confinement in, offenses punishable by 43
For military prisoners, at Fort Leavenworth, Kans..... 58
Sentence to confinement in, mitigation of 58
Sentence to confinement in, what to state..... 54
Sentence to confinement in, when legal 54
Unless sentence authorizes, confinement in, illegal..... 58
When department commanders may designate..... 58

Perjury:
False swearing distinguished from..... 106
Form for charge..... 106
Limit of punishment..... 48

Persuading Soldier to Desert:
Limit of punishment..... 48
Offense of 82

Plea:
Accused stands mute 30, 90
Of guilty, statement inconsistent with..... 30
Of guilty, testimony after..... 29, 30
Special, to the jurisdiction, etc..... 30
Special, of second enlistment..... 30
Special, of statute of limitation 31
Special, procedure in case of..... 31

Post:
Abandoning, etc..... 81
Sentinel sleeping on or leaving..... 80
Sentinel sleeping on or leaving, forms for charges..... 103

Post Commander: Page.
Charges laid before the..... 18
Charges usually presented to, by old officer of day..... 9
Determines when and what cases go to summary court.... 66
Forwards charges for serious offenses..... 18
Forwards completed proceedings of certain courts..... 64
Furnishes company commanders copies of summary court record..... 69
Furnishes detail to execute warrant of attachment..... 32
May use discretion regarding trial for minor offenses..... 68
Must act as summary court in certain cases..... 65
Must personally investigate charges forwarded 18
Refers charges for minor offenses to summary court..... 18
Reports number of cases tried by summary court..... 64

Post Noncommissioned Staff:
May be discharged but not reduced 53
Unless they object, may be tried by inferior courts 15, 53
See also *Noncommissioned Officer.*

Postponement:
Application for, when made..... 28
Extended delay wanted 28
On account of absent witness 28

Post Return:
Officers who act as summary court, reported on 69

Precedence:
Military ordinarily gives, to civil court 13

President of a Court-Martial:
Duties of..... 21
The officer highest in rank on court..... 21

President of the United States:
As confirming authority..... 57
As convening authority..... 11
As reviewing authority..... 57, 58
Limits of punishment prescribed by..... 44
May order courts of inquiry..... 95
Must appoint court in certain cases..... 11
Pardoning power of..... 57
Proceedings of courts appointed by, forwarded to Secretary of War..... 64
Proceedings of courts to be confirmed by, forwarded to Judge-Advocate-General..... 63
Using contemptuous words regarding..... 76

Previous Convictions:
By civil court, inadmissible..... 40
By courts-martial, evidence of..... 40

Previous Convictions—Continued. Page.
Consideration of, by general court 18
Consideration of, by summary court 67
Effect on punishment 41, 51
Evidence of, how recorded 118, 121
Evidence of, submitted with charges 18, 51, 67
Evidence of, when admissible 50, 51
Evidence of, when received by court 40
Meaning of 40
Not limited to those for similar offenses 41
Proper evidence of 40, 50

Prisoners:
Abatement allowed 61
Confinement of, after trial 60
Confinement of, before trial 8
Counsel for 24
Deceased, effects of 97
Duty of officer receiving 9
Escaped, effects of 61
Forwarded to place of confinement 60
General, physically examined when released 62
Not to be arraigned in irons 19
Penitentiary, clemency for 58
Placed in irons, report regarding 60
Releasing without authority, offense of 87
Report of, when and by whom made 9
Suffering to escape, form for charge 105
Suffering to escape, limit of punishment for 50
When to be separated 8
Without charges against, when released 9

Procedure of Courts-Martial. See *Courts-Martial.*

Proceedings of Court-Martial:
Action on, by reviewing authority 57
Application for copy of 64
Appointed by the President 64
Authentication of 23, 55
Communications relating to 64
General, revised by Judge-Advocate-General 63
General, where filed and kept 63
Inferior, where filed and kept 64
Orders, general and special, publishing 59
Orders, publishing, how dated 59
Requiring confirmation by the President 57, 63
See also *Record of Proceedings.*

Proceedings of Courts of Inquiry:
Authentication of 96
Record of, as evidence 96

Profanity: Page.
Penalty for using 82

Professor, United States Military Academy:
Ineligible as member of court 10

Prosecutor:
Can not convene general court 12

Provisions:
Violence to persons bringing to camp 83

Public Stores:
Taken from enemy, secured for United States 75

Punishment:
Ball and chain 42
Branding prohibited 42, 92
By carrying heavy log 42
Discretionary or fixed 41
Effect of previous convictions on 50
Flogging forbidden 42, 92
For contempt of court 90
Forfeiture, in favor of United States only 42
For officers 41
For soldiers 41
Guard duty, as, forbidden 42
Imprisonment beyond term of enlistment 42
Limits of. See *Maximum Limits of.*
Of post noncommissioned staff and hospital stewards 53
Proper amount of 41
Penitentiary 43
Power of reviewing authority respecting 58
Solitary confinement 42, 53
Substitutions for prescribed 53
Tattooing forbidden 42, 92

Quarrels:
Authority to quell 78
Refusing to obey noncommissioned officer quelling 46

Quarters:
Lying out of, without leave 79

Quitting Guard:
Form for charge 103
Limit of punishment 48
Offense of 80

Quorum:
For general court 11

Rank:
Loss of relative, as punishment 41
Of members of courts 20

Rank—Continued. Page.
Of militia officers on duty with regulars 96
Of regular and volunteer officers 96
Suspension from 41

Rape:
Offense of, in time of war 83

Recommendation to Clemency:
Not to be embraced in sentence 56
Who should sign 56

Record of Proceedings:
Accurate, to be kept 55
Accused entitled to copy of 55
Application for copy of 64
Authentication of 23, 55, 96
Daily, subscribed by judge-advocate 23, 55
Disposition of 63, 64
Documents made part of 117
Forms for. See *Forms.*
Forwarded to reviewing authority 23
Hours of session noted in 110, 119, 124
Must contain a complete history of case 55
Of closed session 56
Of summary courts, copies furnished 69
Presence of members, how recorded 110
Previous convictions, evidence of, recorded 118, 121
Reading of record of preceding day 55, 115
Recommendation, where recorded 56
Revision of 56
Statement of accused, when written, signed, etc 117
Statement of service—not part of record 56
See also *Proceedings of Courts-Martial.*

Recruits:
Articles of War to be read to 73

Redress of Wrongs:
Of citizens 83
Of officers 78
Of soldiers 79

Reduction to Ranks:
As a punishment 42
By summary court 68
Form for sentence for 127
In case of previous convictions 52
Of first-class privates of Engineers and Ordnance 45
Prohibited as to post noncommissioned staff and hospital stewards 53

Regimental Courts-Martial. See *Courts-Martial.*

Regulations: Page.
Part of written military law 6

Relieving the Enemy:
Offense of 81

Remission:
Of forfeiture 59
Of sentence 57, 68, 94

Reporter:
How authorized 24
In special cases 25
No compensation for, if in Government service 25
Oath of 28
Pay of 25
Sworn in each case 28

Report, False:
By noncommissioned officer, limit of punishment 50

Report of Summary Court Cases:
Form for 122
Forwarded monthly 64
Where filed 100

Report of Surgeon on Deserter:
Form for 108

Reprimand:
As a punishment 41

Reproachful Language:
Penalty for using 77

Retainers to Camp:
Jurisdiction over 14

Retired Officers:
Ineligible as members of courts 10
Jurisdiction over 13

Retired Soldiers:
Jurisdiction over 13

Retreat:
Failing to retire at, offense of 80

Returns:
False, penalty for making 74
Of regiments, etc., made monthly 74
Penalty for not making 74

Reviewing Authority:
Action of the President as 57, 58
Approval of sentence 57
Can not change finding 39
Can not change sentence 58

Reviewing Authority—Continued. Page.
Can not delegate authority 59
Can not increase punishment awarded 58
Can not postpone sentence of dishonorable discharge 58
May change place of confinement 58
May direct revision of record 56
Mitigation by 57, 68, 94
Mitigation by, for long confinement before trial 59
Of garrison court 70
Of general court 57
Of regimental court 71
Of summary court 68
Orders of, publishing proceedings 59
Orders of, remitting forfeiture 59
Pardoning power of 58
Suspension of sentence by 58

Revised Statutes:
Certain, part of written military law 6
Section 1343, as to spies 97
Sections 5306 and 5313, as to trading with enemy 97, 98

Revision of Record:
By whom directed 56
Can only be made by court 56
Form for 120

Reward for Apprehension:
When stopped against soldier's pay 43

Robbery:
Offense of, in time of war 83
To the prejudice of, etc., limit of punishment 48

Safeguard:
Penalty for forcing 83

Sale of Victuals, etc.:
Duty etc., upon or interest in 76

Seating of Court:
Arrangement of seats 20
Members sit in order of rank 20

Secretary of War:
Application for clemency forwarded to 58
Applied to when expert witnesses are necessary 36
Approval of, for confinement in State penitentiary 59
Certain proceedings forwarded direct to 64

Sedition:
Beginning, exciting, etc 77
Failure to report or suppress 77

Selling Clothing, etc. See *Clothing, etc.*

Sentence: Page.

Abatement of, for good conduct 61
Approval by reviewing authority 57
Confirmation by the President 57
Contemplating payment of stated sum 54
Dishonorable discharge, effect on unserved confinement 62
Date of commencement of 59, 61
Forfeiture for certain number of months 54
Forms for 127
Imposing tours of guard duty, forbidden 42
In excess of legal limit 59
Meaning of word *days* in 61
Mitigation for confinement before trial 59
Not operative before confirmation 59
Of an officer for cowardice or fraud 92
Of death, confirmation of 93
Of death, suspension of 58, 94
Of death, vote upon 54, 91
Of dismissal in time of peace 93
Of dismissal in time of war 94
Of dismissal, suspension of 58
Pardon or mitigation of 57, 68, 94
Procedure when awarding 53
Punishment discretionary, limit ascertained 53
Recommendations not embraced in 56
Respecting general officers 94
Reviewing authority can not change 58
Second, begins when 62
To confinement at post 54
To confinement, begins when 59, 61
To confinement, in penitentiary for over one year 58

Sentinel:

Allowing prisoner to obtain liquor, limit of punishment 50
Disclosing or changing watchword 81
Disrespect to, limit of punishment 50
Drinking with prisoner, limit of punishment 50
Leaving post before being relieved 80
Quitting post to pillage 80, 81
Resisting or disobeying, limit of punishment 50
Sleeping on post, form for charge 103
Sleeping on post, offense of 80
Suffering prisoner to escape, form for charge 105
Suffering prisoner to escape, limits of punishment 50

Soldier:

Charged with crimes to be confined 87
Effects of deceased, disposition of 97

Soldier—Continued. Page.
Jurisdiction over retired 13
Meaning of word in Articles of War 73

Solitary Confinement:
Limit of 53

Special Orders. See *General and Special Orders.*

Specification:
Instructions for drawing 17

Spy:
Confirmation of sentence of 93
Jurisdiction over 14
Statute relating to 97

Staff Officer:
As summary court 65

Standing Mute. See *Plea.*

Standing Order:
Neglect to comply with 102

Statement:
Inconsistent with plea 30
Record of 117

Statement of Service:
Form for 108
Not part of record 56
To accompany charges 18

Statute of Limitation. See *Limitation, Statute of.*

Stores:
Accountability for military 75
Military, lost, spoiled, etc 76
Public, taken from the enemy 75

Striking Superior Officer:
Form for charge 102
Offense of 77

Subpœna (or *Summons*):
By civil court 35
Forms for 128, 129
Officer or soldier receiving 35
Proof of service 32
Sent through military channels 31
Sent with interrogatories 34
Service of 31, 32

Substitution of Punishment:
Rule for 53

Suffering Prisoners to Escape:
Forms for charges 105
Limits of punishment 50

Summary Court. See *Courts-Martial.*

Sunday: Page.
Trials on, by summary court 69

Superintendent, U. S. Military Academy:
Convenes courts for trial of cadets 12

Surgeon:
Acting assistant, ineligible as member of court 10
Examines general prisoners on release 62
Report of, to accompany charges 18
Report of, to accompany charges, form for 108

Surrender:
Compelling commander to 81

Suspension:
As a punishment 41
From rank and command 41
Of pay and emoluments 92
Of sentence of death or dismissal 58, 94

Tattooing:
As a punishment, forbidden 42, 92

Territoriality:
As affecting jurisdiction 13

Testimony:
Corrections in 55, 114
Reading of 55, 114

Threatening and Insulting Language:
Limit of punishment for using, to noncom. officer 49

Trading with the Enemy:
Statutes relating to 97, 98

Trial:
Delay in, by summary court 66
For officers summarily dismissed 13
Hours of 66, 69, 91
On Sunday, by summary court 69
Postponement of 28
Second, for same offense 92

Uniform:
Of accused 19
Of judge-advocate 19
Of members 19
Of military witness 19

Victuals, etc.:
Duty upon or interest in 76

Voire Dire:
Examination on 111

Volunteers: Page.
Officers of, as members of court 10
Regular officers can not try 10

Vote:
Method of taking 21
Tie 21
Upon death sentence 91

Warrant of Attachment:
By whom issued 32
Force necessary to execute 32
Form for 130
Officer executing, served with writ of habeas corpus 33
Procedure in issuing 32, 33
Summary court can not issue 66

Watchword:
Penalty for disclosing or changing 81

Witness:
Attachment of. See *Warrant of Attachment.*
Attendance of, civilian, how procured 31
Attendance of, in capital or special cases 35
Attendance of military, how procured 35
Attendance of, without State, etc 33
Departure of 36
Deposition of. See *Deposition.*
Examination of, manner of 38
Examination of, rules to be followed 38
Examination of, witnesses separated 38
Experts, employment and pay of 36
Fees of, before civil court 38
Fees of, certificate of attendance 38
Fees of civilian, in Government employ 37, 38
Fees of civilian, not in Government employ 37
Fees of civilian, refusing to testify 37
Fees of, form for accounts 132
Fees of, instructions regarding 133
Oath of 27
Uniform of 19

Wounding:
With intent to kill, etc., in time of war 83

Wrongs. See *Redress of Wrongs.*

O