G. R.

HANDBOOK OF MILITARY LAW

APPLIED TO THE

NEW ZEALAND MILITARY FORCES.

Compiled by the Judge-Advocate-General (Colonel J. R. Reed), New Zealand Military Forces, and issued by authority.

WELLINGTON:
PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER.
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INTRODUCTION.

THROUGHOUT this treatise on Military Law in New Zealand the term "unit" is used as defined in the Regulations, except when batteries or companies of artillery are assembled in brigades or divisions of artillery, when, for purposes of discipline the brigade or division will be considered the unit. The references in the margin are to the authorities for the statements made in the text. The forms in the Appendix have been adopted in New Zealand, and as far as possible follow the Army Forms. Acknowledgment is made of the assistance derived in preparing this compilation from Colonel Banning's book on Military Law. The following abbreviations are used :—

A.A.	The Army Act.
A.F.	Army Forms.
App.	Appendix to Manual of Military Law.
D.A.	The Defence Act (New Zealand).
K.R.	The King's Regulations.
Man.	Manual of Military Law.
N.Z.M.F.	New Zealand Military Forms.
N.Z.R.	New Zealand Regulations.
R.P.	Rules of Proceedure.

HANDBOOK OF MILITARY LAW.

Military Law.

Military law is the law which governs the soldier in peace and war wherever he may be serving. When serving in the Dominion the law is contained in the Defence Act. Regulations made under the authority of that Act (including, where made applicable by these regulations, Part I of the Army Act, Rules of Procedure, and King's Regulations), and in Orders in Council and General Orders issued from time to time. N.Z.R. 176.

Throughout this treatise—

(*a.*) "Company, &c.," means squadron, battery, or company :

(*b.*) "Unit" means a regiment of Mounted Rifles, a brigade or battery of Field Artillery, a division or company of Garrison Artillery, a battalion of Infantry, a company of Engineers, a company of the Army Service Corps, a company of the Medical Corps, a company or depot of the Veterinary Corps.

Officers and soldiers of the Territorial Forces are subject to military law under the following circumstances :—

(1.) When performing military duty :

(2.) When going to or from the place of parade, exercise, or military duty.

Discipline in Camp or when Troops mobilized.

When mobilized or in camps of training officers or soldiers charged with any military offence (*i.e.*, an offence against military law) may be arrested as laid down in the King's Regulations. The sections of the King's Regulations are 463 and 482, and may be summarized as follows : Arrest may be either open arrest or close arrest. When not speci- N.Z.R. 201.

fied it means close arrest. An officer or N.C.O. being ordered under close arrest must go to his tent or quarters and remain there, and not leave it except to take such exercise under supervision as the Medical Officer considers necessary. Under open arrest he may take exercise at stated periods within defined limits, which will usually be the precincts of the barracks or camp of his unit. An officer under arrest is not to use his own or any other mess premises. He is not to appear in any place of amusement or at public assemblies, and he is never to appear outside his quarters or tent otherwise than in uniform. An officer when under arrest will not wear sash, sword, belt, or spurs. A private soldier under open arrest will not quit barracks or camp until his case has been disposed of. He will attend parades, but (except under the special circumcumstances detailed in paragraph 482 of the King's Regulations) will not be detailed for duty. A private soldier on being placed in close arrest will be put in confinement under charge of a guard, picquet, patrol, sentry, or provost-marshal, and will be searched and deprived of knives or other weapons. An officer may be placed under arrest by competent authority without previous investigation should the nature of the offence demand it, but ordinarily a Commanding Officer will not place an officer under arrest until he has inquired into the matter, and is satisfied that it will be necessary to proceed with the case. When an officer is placed under arrest a report is to be made at once to the O.C. District. Except when an officer has been placed under arrest in error, he should not be released without the sanction of the highest authority to whom the case has been reported. No officer can demand a Court-martial or persist in considering himself under arrest after he has been released. Should he think himself aggrieved he can seek redress through the proper channel, as prescribed by section 42 of the Army Act. A junior officer may order a senior into arrest if the latter be engaged in any quarrel, fray, or disorder. The rules as to arrest of officers apply to warrant and non-commisioned officers, who, if charged with a serious offence, will be placed under arrest at once, but if the offence is not serious it will be investigated without previous arrest. A private soldier charged with a

serious offence is to be placed under arrest at once, and the N.C.O. who orders him to be confined is to do so without altercation, and will avoid coming into personal contact with the man, but will obtain the assistance of one or more privates to escort him to the guard-tent. Except in cases of personal violence or on detached duties, Lance-Corporals and Acting-Bombadiers of less than four years' service will not confine men without previous reference to the Orderly Sergeant. A man once confined can only be released by competent authority : *e.g.*, if confined in a regimental guard detention tent he can only be released by the authority of the Officer Commanding the Regiment. In the case of minor offences the investigation of the charge may be held without the man being confined. A soldier against whom a charge for a minor offence is pending will not quit the camp until his case has been disposed of. He will attend all parades, but will not be detailed for duty.

Investigation of Charges.

Every charge against a soldier will be investigated without delay in his presence. A soldier in arrest is to be disposed of daily (Sundays, Good Friday, and Christmas Day excepted), and when practicable in the morning before the principal parade. If a soldier is remanded for further inquiry his case will be brought under review daily, and the order for remand will be entered daily in the guard report, or N.Z.M.F. B. 281, by the investigating officer. K.R. 484. K.R. 485.

Company &c. Commanders' Powers.

Every charge against a soldier must be investigated in the first instance by the Company &c. Commander at his company orderly-room, which is to be held at such an hour as will allow of a soldier reserved for disposal by the C.O. being ready to go before him at the appointed hour. If the case is of such a nature as can be properly dealt with by the Company Commander it should be so dealt with, but graver offences should be reserved for the C.O. A C.O. is authorized to grant a large measure of discretionary power to Company Commanders to dispose of any offence K.R. 484. Ib.

with which he himself may deal, including cases where the offender is in confinement, subject to the limited powers of punishment vested in Company &c. Commanders, and also subject to the following restrictions :—

N.Z.R. 206.

(1.) He cannot deal with a charge of drunkenness.

(2.) He has no power to deal with a N.C.O. except to order him under arrest, nor has he the power to admonish or reprimand a private soldier. [N.B.—A private soldier is never under any circumstances reprimanded.)

Charges are to be entered as follows :—

K.R. 485.

(1.) For offences of N.C.O.s and men confined in the guard-room, in the guard report, by the commander of the guard, or, where there is no guard, by the N.C.O. responsible for the custody of the soldiers in close arrest.

(2.) For offences of private soldiers not confined in the guard-room, N.Z.M.F. B. 281, under the orders of the Company &c. Commander.

If a charge against a private soldier for which he has not been in close arrest is reserved by the Company &c. Commander for the C.O.'s award, the former officer will send the charge (N.Z.M.F. B. 252) for entry in the guard report before the hour fixed for the disposal of soldiers in arrest by the C.O. If, on the other hand, a charge for which a private soldier has been in close arrest is disposed of by the Company &c. Commander, that officer will report the fact to the orderly-room, and the entry "Disposed of on N.Z.M.F. B. 281" will be made in the punishment column of the guard report.

A Company &c. Commander who has reserved a case for the award of the C.O. will always attend with the company conduct-book when the soldier is brought before the C.O.

For awards by the Company &c. Commanders copies of N.Z.M.F. B. 281 will be issued to each company, &c. These forms will in camp be sent to the orderly-room daily for supervision by the C.O., and will subsequently

N.Z.R. 206.

be attached to the guard report for that day. Such awards are subject to any remission a C.O. may order, but may not be increased.

A Company Commander can only award punishment as follows :—

(1.) Confinement to camp not exceeding three days ;

(2.) Extra guards or picquets ;

(3.) Fines up to 10s.

Only a Company &c. Commander, or officer acting in the capacity of Company &c. Commander, who must be a commissioned officer, has power to inflict any punishment.

Commanding Officers' Powers.

"Commanding Officer" means the senior officer present in command of any unit. His power of punishment is divided into (1) summary punishments, (2) minor punishments.

(*a.*) *In the case of private soldiers* he may award either a summary or a minor punishment ; but before awarding a summary punishment he must first ask the man whether he wishes to be tried by Court-martial. If the man has claimed a Court-martial he is to be given an opportunity on the following day of reconsidering his decision, unless there are reasons against the adoption of such a course. The summary punishments which a Commanding Officer may inflict are :—

N.Z.R. 203.

(1.) Fines not exceeding £2, but

(2.) In the case of simple drunkenness a fine not exceeding £1, according to the scale hereinafter set out.

(3.) Fines sufficient to make good any expense caused by him, or for any loss of or damage or destruction done by him to any arms, ammunition, equipment, clothing, instruments, or regimental necessaries or military decoration, or to any buildings or property : provided that the total fines in any award under this subparagraph shall not exceed £5. (N.B.—If the amount of the damage done exceeds £5 the case should be reported to the proper superior authority, so that an information under section 55 of the Defence Act, 1909, may be laid or the offender dealt with by Court-martial.)

The following is the scale of fines for simple drunkenness : First offence, 10s. ; second offence within twelve months, £1 ; third offence within twelve months, trial by

Court-martial. Otherwise a fine of 10s. will be imposed for each instance of simple drunkenness. A Commanding Officer may also inflict the following *minor* punishments, the soldier having no right to claim trial by Court-martial :—

(1.) Fines not exceeding £1, except for drunkenness, which it will be observed must be dealt with by summary punishment, thus giving the soldier the right of trial by Court-martial at all times for that offence.

(2.) Confinement to camp or barracks for any period not exceeding fourteen days, or to the termination of the training-camp, during which defaulters will be required to answer to their names at uncertain hours throughout the day, and will be employed on fatigue duties to the fullest practicable extent with a view to relieving well-conducted soldiers therefrom. Defaulters will attend parades and take all duties in regular turn. When the fatigue duties required are not sufficient to keep the defaulters fully employed the Commanding Officer may order defaulters to attend punishment drill, provided that they shall not be liable to punishment drill after the expiration of ten days from the date of the award of confinement to camp or barracks. (N.B.—King's Regulation 498 lays it down that punishment drill is not to exceed one hour at a time, and is to consist of marching in quick time only and not of instruction drill. It will not be carried out on Sundays. In very cold weather the double time may be used for short periods. It will be carried out in marching order, and will consist in the mounted corps of two hours' drill per diem. In the Infantry and dismounted corps it will never exceed four hours altogether in one day. It is to be carried on in the barrack-yard or drill-ground.)

(3.) Extra guards or picquets : These are only to be ordered as a punishment for minor offences or irregularities when on, or parading for these duties.

(4.) Admonition. (N.B.—A private soldier cannot be punished by reprimand.)

(*b.*) *In the case of Non-commissioned Officers :* In dealing with N.C.O.s (including acting N.C.O.s) the Commanding Officer cannot award any summary or minor punishment, but they may be—

(1.) In the case of N.C.O.s not above the rank of Corporal, reduced to the ranks. (N.B.—When such a punishment is likely to follow, the accused must, previous to the award, be given the right to trial by Court-martial.)

(2.) Reprimand or severe reprimand.

(3.) Admonition.

(4.) Reversion to permanent grade in case of a N.C.O. holding acting rank or appointment.

In cases either of N.C.O.s or private soldiers calling for higher punishment than laid down as above, the C.O., through the proper authority, will remand the case, and will make application for the case to be tried by Court-martial. An officer, whether an O.C. or a Company &c. Commander, in awarding a fine shall be guided by the following scale :— N.Z.R. 205 N.Z.R. 207.

	Maximum Fine. s.	d.
(*a.*) For appearing on parade not in the order of the day, or with clothing, arms, or accoutrements dirty, incomplete, or improperly put on	2	6
(*b.*) Inattention, or for minor irregularities ...	2	6
(*c.*) Neglect to notify change of address within fourteen days of such change	7	6
(*d.*) Failure to produce his personal record-book when called upon to do so by superior authority	10	0
(*e.*) Minor cases of non-compliance with orders or neglect of duty	10	0
(*f.*) Absent from parade without leave ...	10	0

Collection of Fines.

The actual collection of fines will be undertaken by the Permanent officers. Territorial officers are in no way

responsible for the collection of fines imposed by them. The following preliminary procedure, however, must be adopted by Territorial officers :—

(*a.*) An order duly signed, which may be in the form in the Appendix, shall be served upon the person to whom the order relates by delivering a copy thereof to him personally, or by posting the copy by registered letter addressed to him at his last known place of abode.

(*b.*) A duplicate of such order, with a certificate indorsed upon it signed by the officer inflicting the fine that it is a true copy of the original order, should be immediately forwarded to the Permanent Adjutant of the unit, together with a statement as to whether the said order was served personally or posted by registered letter. Having done this the Territorial officer need not further trouble about the matter, as the Permanent Adjutant will do what further is necessary. It must not be forgotten, however, that the soldier fined has a right of appeal within seven days to the O.C. District. In such case the officer inflicting the fine may possibly be called upon to attend before the O.C. District to explain the position.

As regards the Permanent Adjutant, the Act provides that if the fine is not paid to the officer who made the order within seven days after the service thereof the before-mentioned certified duplicate of the order may be transmitted to the Clerk of the nearest Magistrate's Court, who shall file the same, and the order so filed shall operate as if it were a judgment duly recovered in that Court in an action for debt.

In the case of an appeal, the order above referred to is superseded by such order as the O.C. District may make, which then becomes the order for payment of the fine, and will be dealt with in the same manner as if it were the original order.

To enforce this judgment the Permanent Adjutant may (1) issue a distress warrant to seize the offender's goods,

or (2) issue a judgment summons requiring the offender to appear at the Court to show cause why he should not be committed to prison for non-payment of the amount. In practice, unless it is clear that the offender is in a position to pay and will not, it will probably be better, after forwarding the order to the Court, to let it rest at that and wait till the first training-camp thereafter, when the amount of the fine can be deducted from the offender's pay (see N.Z. R. 208). If the fine be inflicted while in camp the order should be served on the offender, but it will be unnecessary to send the duplicate to the Court, as the amount of the fine may be stopped at once from the offender's pay, subject, of course, to the possible liability to refund such fine in the event of the soldier successfully appealing against its infliction.

Trial of Offenders.—Procedure.

Whilst in camp the Commanding Officer should hold a regular defaulters' parade and orderly-room, which should be at a stated hour each morning, about an hour before the principal parade. This should not be held on Sunday, Christmas Day, or Good Friday. An officer of any company to which an accused soldier belongs must be present at this orderly-room.

A guard report in form in Appendix, for which the commander of the guard is responsible, must be prepared, giving full particulars of charges against offenders, list of witnesses, &c. The Sergeant of the guard is responsible that all accused persons for disposal are marched off under escort so as to arrive at the orderly-room ten minutes before the appointed hour. They are paraded outside the orderly-room without any side arms or belts. The Sergeant-major will call the roll of witnesses in each case from the guard report, and report to the Adjutant when all are present. These witnesses should be paraded apart from the accused, but in close proximity to the orderly-room. On arrival of the C.O. the senior officer present calls the parade to attention, and officers will salute. The C.O. takes his seat at a table, with the second in command on his right and the Adjutant on his left, the other officers following into the orderly-room as

far as space will permit. The Adjutant then reads out the name of the first accused, and gives the command "March in the accused." The accused is marched in. Accused persons are to be deprived of their caps and anything they might use as a missile before being marched into the presence of the C.O. (N.B.—Head-dress will not be removed in orderly-room except by the accused).

The C.O. will then proceed as follows: Addressing the accused he says, "Is your name So-and-so?" Receiving a reply in the affirmative he will say, "You are charged that ——" (reading from charge-sheet). "Do you plead guilty or not guilty to the charge?" If the accused pleads guilty the C.O., in order to consider what punishment should follow, inquires, "What are the circumstances?" and the person who makes the charge will detail the circumstances. If the accused denies any circumstances the truth or untruth of which the C.O. may consider material to be ascertained in order to arrive at a just punishment, witnesses should be called, the procedure being similar to that detailed hereafter on a plea of "Not guilty." If the accused does not deny the circumstances detailed, or only denies them on immaterial points, the C.O. should ask for the company conduct-book, and should, in addition, call on his Company Commander for a statement as to the accused's general character and behaviour. The C.O. will then ask the accused if he has anything further to say. Having heard anything he has to say, the C.O. will consider what punishment he should inflict. If the case is one of drunkenness or a case in which he considers it necessary to award a "summary" as distinguished from a "minor" punishment he must, before making his award, warn the accused that he has the right to be tried by Court-martial instead of being dealt with by him. The warning should be to the effect following: "You are entitled, if you so elect, to be tried by Court-martial. Do you desire to be tried by Court-martial, or will you be dealt with by me." If the accused elects to be tried by Court-martial, the order should be given to march him back to the other accused, and an entry made in the charge-sheet as follows: "Accused elects to be tried by Court-martial; remanded till ——" (the next

day). He is brought up the next morning at orderly-room, and the C.O. should address him to the following effect: "You yesterday elected to be tried by Court-martial on the charge that is presented against you: do you still desire to be tried by Court-martial?" If the accused still so desires, an entry should be made on the charge-sheet to the effect following: "This accused having been remanded from yesterday for the purpose of enabling him to reconsider his election to be tried by Court-martial, and still expressing his desire to be so tried, is remanded under open arrest for trial by District Court-martial." The matter should then be reported to the O.C. District, a precis of the evidence against the accused accompanying the report. (N.B.—Under circumstances such as the above it is advisable to get the evidence of each witness for the prosecution reduced to writing and signed by the witness as soon as possible. Upon this matter generally see title "Trial by Court-martial—Proceedings before Trial.")

It may be assumed that accused persons will usually prefer to be dealt with by the C.O. rather than elect to be tried by Court-martial, for one reason, if no other: that the C.O.'s powers of punishment are limited. Assuming, therefore, that the accused elects to be dealt with by the C.O., then the C.O. will award the sentence and enter it in the punishment column of the guard report, and the accused will be marched out. The next case will then be called. If the accused pleads not guilty, the first witness for the prosecution will then be called, the other witnesses, both for prosecution and defence, except, of course, the accused, in whose presence all evidence at the hearing of a charge must be taken, being kept outside and out of hearing of what takes place in the orderly-room. In every case where the C.O. has power to deal with the case summarily the accused has a right to demand that the witnesses against him be sworn. The witness may be directed to make a statement, or may be asked questions in order to elicit what he has to say, and when this evidence in chief is completed the accused must be given the opportunity of asking the witness any questions bearing on the matter. This is called cross-examination. If necessary to clear up any

A.A. 46, s.s. 6.

point left doubtful by the cross-examination, the witness can then be asked questions in re-examination on behalf of the prosecution. The other witnesses for the prosecution will then be called in turn, each witness being marched out to his place amongst the witnesses when he has completed his evidence, care, however, being taken that he is placed in such a position that he cannot communicate to any unexamined witness anything that has taken place in the orderly-room. All the witnesses for the prosecution having given evidence, the C.O. should ask the accused whether he desires to give evidence himself, or to call witnesses, or to do both. Whatever he elects to do he must be allowed, and the C.O. must see that any witness he wishes to call is obtained for him. Unless the accused elects to give evidence himself he cannot be compelled to answer, and should not be asked any question bearing on the charge. If he elects to give evidence he can be treated as an ordinary witness, and asked any relevant question. When all the evidence as to the facts of the case is concluded, if the C.O. decides to dismiss the case he should announce his decision, and record his acquittal on the charge-sheet. If, on the other hand, he decides to convict, he should, as in the case of a plea of "Guilty," require the production of the company conduct-book and a statement as to the accused's general character from his O.C. Company. He then, as before, awards the sentence, and records the punishment in the punishment column of the charge-sheet, always remembering that if he proposes to award a "summary" penalty he must first give the accused the opportunity as before mentioned of being tried by Court-martial. When all the accused are disposed of the Adjutant allows the accused who have been admonished or dismissed to fall out. The rest are marched back to the guard-tent, where those who have been fined should be served with the orders for fines before being dismissed and the other punishments duly carried out.

Offences with which C.O.s may deal.

K.R. 487. A C.O. may, without reference to superior authority, dispose summarily of or try by Regimental Court-martial a

soldier charged with an offence under the following sections of the Army Act : 6 (except on active service), 8, (2) (threatening or insubordinate language only—except on active service), 9 (2) (except on active service), 10 (except subsection (1)), 11, 14, 15, 18 (1) (3), 19, 20 (except when the act is wilful), 21, 22, 24, 27 (4), 33, 34, and 40. First and less serious offences under the above sections, and minor neglects or omissions not resulting from deliberate disregard of authority or not associated with graver offences, should as a rule be dealt with summarily. A charge for any other offence than those above mentioned which the C.O. desires to dispose of summarily will be referred to the O.C. District in a letter stating the circumstances of the case, and accompanied by the soldier's conduct-sheets. The C.O. may refer a charge for any offence to superior authority, with an application for a court-martial. (N.B.—The pains and penalties which may be imposed by Court-martial under the Army Act for the offences above mentioned cannot, of course, be imposed by the C.O. He is strictly limited to the powers of punishment mentioned previously. This fact should not be lost sight of in deciding whether a case should be dealt with summarily or not. In cases calling for higher punishment the C.O., through the proper authority, will remand the case, and will make application for the case to be tried by Court-martial.)

Except where it is important that the guilt or innocence of the accused should be definitely decided, it is undesirable to send a case before a Court-martial when it appears doubtful whether the evidence will lead to a conviction. In such a case the charge should be ordinarily dismissed under the provisions of the Army Act, section 46.

Discipline otherwise than in Camp.

Officers or soldiers of the Territorial Force who commit, N.Z.R. 200.
when performing military duty or going to or from the place of parade, exercise, or military duty any of the offences specified in Part I of the Army Act shall be liable to be arrested, tried by Court-martial, and punished in the manner laid down in the Army Act and the Rules

of Procedure : provided that when the offence for which the officer or soldier is tried is one of those specified in the Defence Act, the punishment awarded shall not exceed
N.Z.R. 201. that therein laid down for that offence. An offence committed when the troops are neither mobilized nor in a camp of training which cannot be dealt with on the spot will be reported to superior authority for instruction as to disposal, the offender in the meantime, except in cases of violence, being placed in open arrest. "Open arrest" under these circumstances is not quite the same as open arrest in camp. In this case it only means that the offender is not allowed to wear uniform or attend parades until his case is dealt with by superior authority.

N.Z.R. 202. In cases of violence the offender will be handed over to the civil authorities for temporary custody on the authority of the senior officer or N.C.O. on the spot. The officer or N.C.O. ordering the arrest will report the case at once by telegram to the offender's Company &c. Commander, and to the headquarters of the unit or corps to which the offender belongs. In handing over an offender to the police authorities an order must be given in form N.Z.M.F. C. 396, as set out in the Appendix.

Bearing in mind that there is no provision for close arrest when troops are neither mobilized nor in camp, the directions already given for dealing with offenders in camp apply equally to cases of offences committed at any time, provided, of course, that the accused commits his offence when performing military duty or going to or from the place of parade, exercise, or military duty.

Trial by Court-martial.

Proceedings before Trial.

When a soldier has been remanded for trial by Court-martial the first thing to be done is to take a summary of evidence. This is a statement taken down in writing in a narrative form of the evidence given by the witnesses at
R.P. 3. the investigation held by the C.O. It is taken in the presence of the accused and of the C.O., or some officer deputed by him. The accused may question the witnesses, and the questions and answers will be taken down. The

accused can give evidence himself, and call witnesses in his defence, and make any statement he likes, which will be added in writing; but he cannot be required to sign it, and should be warned that anything he says may be used against him at his trial. The witnesses sign their state- R.P. 4 and notes.
ments, and the whole summary is signed by the officer before whom it is taken, who will add a certificate that the requirements of section 4, Rules of Procedure, have been complied with. The evidence is not given on oath unless the accused demands it. The accused's evidence and any statement he makes must be kept quite distinct. In the R.P. 8.
case of an officer, a summary of evidence need not be taken unless he demands it, but he must then be furnished with an abstract of the evidence at least twenty-four hours before his trial. The uses of this summary of evidence are : first, it is forwarded with the application for trial R.P. 17 and
to the convening officer to enable him to see that there is notes. R.P. 37.
a *prima facie* case against the accused. If he decides to try him the summary is forwarded to the President, to let him get a general idea of the case he is going to try; it is laid before the Court by him, and can be used in checking the evidence given by the witnesses at the trial. If the prisoner pleads guilty it is read to the Court to let it see the circumstances under which the offence was committed, and thus guide them in determining the sentence, and it is then attached to the proceedings to guide the confirming officer.

Framing Charges.

The next step will be to draw up a charge-sheet containing the charges which the evidence given in the summary discloses, and upon which it is intended to try the accused.

A charge is an accusation that a person subject to military law has been guilty of an offence. A charge-sheet R.P. 9.
contains the whole issue or issues to be tried at one time, and may contain one or more charges. Every charge-sheet must begin with the name and description of the accused, R.P. 10.
and an averment that he is subject to military law. The proper forms to be used for the commencement of a charge-sheet are given in Rules of Procedure, App. I, Part I, p. 532 *et seq.*

Each charge is divided into two parts—(1) The statement of the offence, (2) the statement of the particulars.

R.P. 11. The statement of the offence must, unless it is a civil offence, be in the words of the Army Act; and, if a civil offence, be in such words not necessarily technical as will sufficiently describe the offence. The statement of the offence will be in the forms given in Rules of Procedure, App. I, Part II, pp. 534–42. In using these forms the following rules must be observed. Where two or more words or expressions are bracketed together, the particular word or expression which most accurately describes the offence must be used.

A.A. 8 (1). *Illustration:—*

Striking .. ..)
Using violence to ..) his superior officer, being in the execution of his office.
Offering violence to)

Here the expression used must be "striking," "using violence to," or "offering violence to," according as the accused actually struck, or used other violence (*e.g.*, kicked), or offered violence (*e.g.*, attempted to strike).

The word "and" may be used to couple two or more such words or expressions, but a charge must never be in the alternative: thus, the word "or" joining two such expressions would be a bad charge.

R.P. 11. The statement of the particulars need not be in any prescribed form of words, but they must state such circumstances concerning the offence as will enable the accused to know what the particular crime he is charged with consists of. All the ingredients necessary to constitute the offence should be stated. If the exact place is the essence of the offence it must be stated; otherwise a general description will suffice, and sometimes such words as "near" or "between" may be used. Similarly, a date should be stated, and if the exact date is not known the words "on or about" may be used; but if the exact date and time are of the essence of the offence they must be stated. Sometimes the particulars in one charge may refer to the particulars in another—*e.g.*, "at the place and on the date mentioned in the first charge." The statement of the particulars must correspond in substance with the statement of the offence. If there is such a divergence between them that in effect one specifies one offence and the other another, the charge is illegal and cannot stand. It must be observed when considering the different crimes that some of them can only be committed by an officer and others by a soldier.

Illustrations.—"Behaving in a scandalous manner unbecoming an officer and a gentleman" could only be charged against an officer. "Striking a soldier" could only be charged against an officer or N.C.O., not a private. (N.B.—If necessary to charge a soldier with striking another soldier the charge should be laid under A.A. 40.) "Breaking out of barracks" could not be charged against an officer. "Stealing goods the property of a comrade" could not be charged against an officer. (N.B.—There is no technical difficulty in deciding whether any particular charge will lie against an officer only or a soldier only, or against either or both. The Army Act in each case specifically states, "Every officer, &c.," or "Every soldier, &c.," or "Every person subject to military law, &c.," who commits—then follows the particular offence.) A.A. 16. A.A. 37. A.A. 10. A.A. 18.

Each charge must disclose one offence only, and in no case can an offence be described in the alternative in the same charge. Thus it would be wrong to charge a man with "making away with by pawning *and* selling his arms, &c." If the evidence shows that he pawned some articles and sold others, two charges must be framed—one charging him with pawning certain things, the second with selling the other articles. R.P. 11. App. 1 (7–10).

When it is doubtful whether the facts proved by the evidence are more correctly described by one word or expression than another, alternative charges may be framed, each charge containing one of the expressions which appear applicable to the facts capable of being proved—*e.g.*, "Stealing goods the property of a comrade," or "Receiving, knowing them to be stolen goods, the property of a comrade." App. 1 (6).

Separate charge-sheets are used to prevent the embarrassment which might arise to the Court or the accused by trying several charges at one time, especially if the facts are very complicated, or if the offences took place at R.P. 62 note (A).

different times, or if quite different sets of witnesses are required to prove the various charges. In practice, therefore, not more than three or four charges should be placed in the same charge-sheet, and offences of different descriptions should be in separate charge-sheets unless they form part of the same wrongful transaction.

When a soldier is arraigned on a serious charge, minor charges against him are not usually included in the charge-sheet. The charge-sheet should be signed by the accused's Commanding Officer, and the section of the Act under which each charge is framed should be inserted in red ink. If the accused has elected to be tried it should be so stated at the top of the charge-sheet. K.R. 568.

Application for Trial.

If the Court before which the accused is to be arraigned is a Regimental Court-martial it will be convened, as a rule, by his Commanding Officer. If, however, the Court is to be convened by some higher authority, an application for the assembly of the Court must be made on N.Z.M.F. B. 116, and the documents specified in the form must be sent in with it. These documents are— A.F. B. 116.

1. The charge-sheet in duplicate.
2. The summary of evidence.
3. The accused's squadron or company conduct-book.
4. List of witnesses for the prosecution and defence, with their present addresses.
5. Statement as to the character and service of the accused on N.Z.M.F. B. 296. A.F. B. 296.

This last-named document contains the following information :—

(1.) A summary of the entries (if any) in the accused's company conduct-sheet, distinguishing between those within the last twelve months and since enlistment; and instances of gallant conduct (if any).

(2.) Whether the accused has been previously convicted. If so, the previous convictions are set out in a schedule attached to the statement.

(3.) Whether he is under sentence already, and, if so, for how long.

(4.) How long he has been awaiting trial.

(5.) His age, date of attestation, any decorations the court can forfeit. (If a warrant officer or non-commissioned officer, how long he has served in the different ranks.)

The name of the officer who investigated the case is stated, in order that he may not be detailed as a member of the Court.

If the accused elected to be tried instead of submitting to a summary award of his Commanding Officer, it should be so stated on the application. The time which should elapse between the C.O.s remanding the accused for trial and the issue of the order for the assembly of a Regimental Court-martial or forwarding the application for a higher court should not under ordinary circumstances exceed thirty-six hours. Man. 582. R.P. 5 (B).

Duties of Convening Officer.

On receiving an application for a Court-martial the convening officer should satisfy himself that the charge-sheet discloses an offence against the Army Act and the evidence in the summary justifies a trial. He should also be careful that the proposed Court has jurisdiction to try the accused. He may convene either a General Court-martial or District Court-martial if he has a warrant enabling him to do so, or he may refer the case to a superior authority, or he may send back the application telling the C.O. to dispose of it summarily or by Regimental Court-martial. A N.C.O. above the rank of Corporal is only to be tried by a Regimental Court-martial when the O.C. decides that a higher Court cannot, having due regard to the public service, be convened. R.P. 17. K.R. 548. K.R. 438.

If he decides to convene a Court he must issue the necessary order (for forms *vide* Rules of Procedure, App. II, p. 558 *et seq.*), he must appoint the President by name, and detail the necessary number of officers and any waiting members he may think expedient. He will deal with the various documents sent in with the application for trial as follows : One copy of the charge-sheet will R.P. 17.

be filed with the application; the other copy of the charge-sheet and the summary of evidence will be sent to the President; the soldier's conduct-sheet, the list of witnesses, and the statement as to the accused's character and service, will be sent back to his corps.

The convening officer is responsible for the legality of the charge-sheet, and that a duly qualified officer is named to act as prosecutor. If he has no one serving under his command fit for the duty he must apply to superior authority for one.

Under Rules of Procedure 17 as applied to New Zealand, if more than thirty days elapse between the receipt of an application for a Court-martial and the disposal of the case, either by the assembly of a General or District Court-martial or otherwise, the officer having power to convene a General or District Court-martial must report the case and the reasons for the delay to the General Officer Commanding.

Defence.

R.P. 13. An accused person is to be given every facility for preparing his evidence, and is to be allowed free communication with his witnesses and any friend or legal adviser he

R.P. 14. wishes to consult. He is to be warned for trial by an officer not less than eighteen hours before trial in the case of a Regimental Court-martial, or twenty-four hours in the case of any other Court-martial. The officer warning him is to give him a copy of the charge-sheet, and will read it to him and if necessary explain it. A copy of the summary of evidence is also to be given to him gratis, and he is to be asked if he wishes any witnesses summoned for his defence. If he gives their names, reasonable steps will be taken for securing their attendance, otherwise the onus of procuring them will rest on him. A list of the officers who are to form the Court, together with any

R.P. 14, note C. waiting members, will be given to him if he so desires as soon as they have been detailed. In the case of a General

R.P. 15. Court-martial this list would be given in any case. If he is to be jointly tried he must be so informed, to give him an opportunity of claiming separate trial if he has grounds for such claim. If it is intended to employ counsel for

the prosecution he must be so informed at least seven days before the trial, unless he has given notice that he intends to employ counsel for the defence. If a Judge-Advocate has been appointed he can consult him on any point of law. R.P. 89 (B). R.P. 103 (A).

COURTS-MARTIAL: THEIR DESCRIPTION, COMPOSITION, AND POWERS.

There are three ordinary kinds of Court-martial—the General, the District, and the Regimental. There is also the Field General Court-martial, which need not be here considered.

(A.) *General Court-martial.*

Convening Authority.—The Governor, or some qualified officer having a warrant authorizing him to convene such Court. This warrant may come directly from the Governor, or from some officer authorized to delegate his authority. A "qualified officer" means the Commandant of the Defence Forces; an Officer Commanding a District; the Officer commanding the Permanent Force. The names of officers authorized by warrant from the Governor to convene General Courts-martial will be published in General Orders from time to time. D.A. (1910) 13. N.Z.R. 215.

Legal Minimum of a General Court-martial.—Five. A.A. 48 (3).

Service required.—Each officer forming a General Court-martial must have held a commission for not less than three years.

Corps of Members.—They must not all belong to the same regiment or battalion, unless the convening officer certifies in the order convening the Court that, having due regard to the public service, other officers are not available. R.P. 20 (A).

Rank of President.—Not below Field Officer, unless the convening officer is below that rank, or certifies in the order convening the Court that, having due regard to the public service, a Field Officer is not available, when he may be a Captain. If a full Colonel is available as President, no officer of inferior rank should be detailed. A.A. 48 (9). K.R. 578.

Rank of Members.—Five must not be below the rank of Captain. When an officer is being tried all the members should be of equal or superior rank to the accused, and in no case may an officer under the rank of Captain sit on a A.A. 48 (3).

R.P. 21 (B). A.A. 48 (7). Court for the trial of a Field Officer. If a Commanding Officer is being tried, as many members as possible are to

K.R. 578 (ii). be officers who have held or are holding similar commands to that held by accused.

A.A. 48 (6). *Jurisdiction.*—All persons subject to military law.

Ib. *Powers of Punishment.* — A General Court-martial has power to inflict the fullest penalties laid down in the Army Act.

D.A. (1910) 13. *Confirming Authority.*—The Governor, or some qualified officer as before defined duly empowered by the Governor

N.Z.R. 215. in that behalf. Names of officers so empowered will be published in General Orders from time to time.

(B.) *District Court-martial.*

D.A. (1910) 13. *Convening Authority.*—An Officer having an authority by warrant from the Governor to do so, or an officer not below the degree of a Field Officer of the Permanent Force or Permanent Staff to whom such authority has been delegated by a qualified officer as before defined, duly empowered by the Governor to so delegate such autho-

N.Z.R. 215. rity. The names of officers authorized as aforesaid will be published in General Orders.

K.R. 576. *Legal Minimum.* — Three is the number fixed by the Army Act, but in doubtful or difficult cases five should if possible be detailed.

A.A. 48 (4). *Service required.*—Each officer must have held a commission for not less than two years.

R.P. 20 (A). *Corps of Members.*—They must not all belong to the same regiment or battalion, unless the convening officer certifies in the order convening the Court that, having due regard to the public service, other officers are not available.

Rank of President.—Not below Field Officer, unless the convening officer is below that rank, or certifies in the order convening the Court that, having due regard to the

A.A. 48 (9). public service, a Field Officer is not available, when he may be a Captain; or, if the convening officer certifies a Captain is not available, he may be a subaltern; except

A.A. 182 (4). for the trial of a warrant officer, when he cannot be under the rank of Captain.

K.R. 576. *Rank of Members.*—When the Court consists of only three members, not more than one should be a subaltern.

Jurisdiction.—All persons subject to military law except officers and warrant officers holding honorary commissions. A.A. 48 (6). A.A. 190 (4).

Powers of Punishment.—Imprisonment with or without hard labour not exceeding two years or any less punishment, except in the case of warrant officers, when the only punishments this Court can inflict are—forfeitures; fines; stoppages; dismissal; reduction to the bottom or any other place in his rank, or to an inferior class of warrant officer (if any); or reduction to a lower grade, or, if originally enlisted as a soldier, to the ranks. A.A. 48 (6). A.A. 182 (2).

Confirming Authority.—The Governor, or any qualified officer as before defined duly empowered by the Governor. The names of officers so empowered will be published in General Orders from time to time. D.A. (1910) 13. N.Z.R. 215.

(C.) *Regimental Court-martial.*

Convening Authority.—Any officer authorized to convene a General Court-martial or District Court-martial, or any C.O. not below the rank of Captain. No warrant is required. A.A. 47.

Legal Minimum.—Three officers. Ib.

Service required.—Each officer must have held a commission for not less than one year. Ib.

Corps of Members.—May belong to the same or different corps. A.A. 50.

Rank of President.—Not below the rank of Captain except where the Court-martial is held on the line of march, unless the convening officer certifies in the order convening the Court that, having due regard to the public service, a Captain is not available, when he can be of any rank. A.A. 47.

Jurisdiction.—Cannot try an officer, a warrant officer, or a person not belonging to His Majesty's Forces. A N.C.O. above the rank of Corporal is only to be tried by this Court if the General Officer Commanding decides that it is not practicable to convene a higher Court. A.A. 47, 182, and 184. K.R. 438.

Offences under sections 17, 18 (4) or (5), or 41 of the Army Act are not to be dealt with by Regimental Court-martial. K.R. 583 (ii).

A.A. 47 (5). A.A. 44 (ii). *Powers of Punishment.*—Detention not exceeding forty-two days, or any less punishment, except discharge with ignominy or forfeitures.

A.A. 54 (1A). *Confirming Authority.*—The Convening officer, or any officer having power to convene such a Court at the time of the submission of the finding and sentence.

Courts-martial generally.

N.Z.R. 218. Whenever a member of the Territorial Forces is being tried by Court-martial at least one member of the Court must belong to the Territorial Forces. The Adjutant of a Territorial unit will be considered an officer of the Territorial Force for this purpose if no Territorial officer is forthcoming.

A.A. 161. No person can be tried by Court-martial for an offence against the Army Act which was committed more than three years before the date of trial, except the offence is mutiny or desertion.

A.A. 158. No person can be tried by Court-martial for an offence committed whilst subject to military law after he has ceased to be subject to military law, unless the proceedings are commenced within three months of his so ceasing to be subject, or unless the offence be mutiny or desertion.

Court-martial Procedure.

R.P. 95, note. The proceedings are written on an Army Form, and must be free from erasures and interlineations as far as possible. Any such must be verified by the initials of the President, who, unless there is a Judge-Advocate, is responsible for their accuracy, custody, and transmission to the authority prescribed in the order convening the Court. If there is a Judge-Advocate this responsibility devolves upon him. The members take their seats according to army rank, except in the case of a Regimental Court-martial composed entirely of officers of the same corps, when they will sit according to their regimental seniority. The names of the President and members are recorded in the proceedings in order of seniority. If there be a Judge-Advocate he will take his seat on the President's right, usually at a separate table, a separate table on the left being assigned to the prosecutor and his counsel (if any). The prisoner and his counsel (if any) sit facing the President.

R.P. 95 (A).

R.P. 58.

Duties of President.

The duties of the President are to see that the trial is properly conducted and justice administered, and that the accused does not suffer any disadvantage from his ignorance of procedure; to administer the oath to members of the Court; to procure any witnesses required who have not already been summoned by the convening officer; to put any questions to the witnesses which the Court may ask; to close the Court when necessary; to collect the votes of the members on any question to be decided by the Court, and if the votes are equal to give a casting-vote as explained below; to initial any corrections in the proceedings; to be responsible for their accuracy and safe custody; to sign the same and transmit them as directed at the end of the trial. If there is a Judge-Advocate, some of these duties devolve on him as stated below.

A.A. 53 (5) (8). R.P. 26, 45, 50, 59, 69 (B), 78, 85 (A), 95 (A), and note 96.

Judge-Advocate.

A Judge-Advocate must be appointed at every General Court-martial, and may be appointed at a District Court-martial, but in practice this is seldom done. He is appointed by warrant from the Judge-Advocate-General. A Judge-Advocate is not a member of the Court, but merely a legal assessor to advise the Court on points of law, and to act as the ministerial officer of the Court. He is usually an officer selected for his special knowledge of military law, but he need not necessarily be a person subject to military law. Any grounds which would disqualify an officer from being a member of the Court as presently explained would also disqualify him from acting as Judge-Advocate at that trial. If the Judge-Advocate dies or is incapacitated from attending during the trial, another fit person may be appointed, but the Court cannot go on in the absence of a Judge-Advocate. His duties are to advise the prosecutor or the accused on any point of law he may submit; to represent the Judge-Advocate-General; to inform the Court of any defect in the charge or any irregularity in the proceedings; to remain entirely impartial; to take care the accused suffers no disadvantage through ignorance; to swear the Court and all wit-

R.P. 101.

R.P. 102.

R.P. 103.

R.P. 26, 82 (A). R.P. 78. R.P. 103 (E). R.P. 45 (B), 50, 95 (A), 96.

nesses, and summon any not summoned by the convening officer; to sum up at the conclusion of the case, unless he and the Court consider it unnecessary; to keep the record of the proceedings, and to sign and transmit them to the proper authority.

R.P. 103 (F).

The Court should be guided by any opinion given by the Judge-Advocate on any point of law, and should not overrule it except for weighty reasons. The Court are responsible for their decisions, but they may incur great risk by disregarding his opinion on any legal point. They may, if they wish, record on the proceedings that they have decided in consequence of his opinion.

Preliminary Proceedings.

R.P. 64. K.R. 579.

The time at which the Court opens is entered on the proceedings. Courts sit at such hours between 6 a.m. and 6 p.m. as may be ordered; usually between 10 a.m. and 4 p.m. or 11 a.m. and 5 p.m. They should not be required to sit more than six or at most eight hours in a day, because all parties would become weary. If the Court think it necessary they may continue their sitting beyond 6 p.m., but must enter their reason for so doing on the proceedings. In cases of necessity a Court may sit at any hour of the day or night, and on Sunday, Christmas Day, or Good Friday, but only if the convening officer certifies that military exigencies require it. Once the accused has been arrainged the Court should continue the trial from day to day, but they may adjourn from time to time when necessary under the Act or Rules of Procedure.

R.P. 65.

R.P. 65 and notes.

The Court must adjourn in the absence of the President or Judge-Advocate, or if reduced below the legal minimum, or if the accused is unable to attend. They may also adjourn if the number detailed are not present when the Court assembles, or to procure the attendance of a witness, or to allow the accused further opportunity of preparing his cross-examination of a witness. The Court may also adjourn to view any place, but they must take the accused with them.

A.A. 53 (7 note).

The order convening the Court is read, is marked so as to identify it, signed by the President, and attached to the proceedings. It may here be remarked that all documents which are intended to form part of the proceedings must be similarly marked and signed, and, with the exception of the charge-sheet, attached at the end of the proceedings in the order in which they are produced before the Court. The charge-sheet is inserted after page B in the proceedings. If the original document cannot be spared for this purpose a copy must be compared with the original and so attached. The charge-sheet and summary of evidence are laid before the Court by the President, to whom they have been sent by the convening officer. The Court now satisfy themselves as to their (*a*) legal constitution and (*b*) jurisdiction.

Man. 584.

R.P. 17 (E).

As regards (*a*) they must see that— R.P. 22.

(1.) So far as they can ascertain, they have been properly convened :

(2.) The Court consists of not less than the legal minimum, and, except as stated below, of not less than the number detailed :

(3.) Each of the officers is "eligible" and not "disqualified" :

(4.) The President is of required rank and duly appointed :

(5.) In the case of a General Court-martial, the officers are of required rank :

(6.) If there is a Judge-Advocate, he has been duly appointed and is not disqualified.

If not satisfied they must adjourn and report to the convening authority.

R.P. 18.

If on assembly it is found that the number detailed is not available, the Court should ordinarily adjourn for fresh members to be appointed; but if they consider it advisable to proceed they may do so, recording their reasons, provided always they are not reduced below the legal minimum.

R.P. 19.

An officer is not *eligible* to sit on a Court-martial unless he is subject to military law and has the required service for the particular description of Court. An officer is *disqualified* from sitting on any particular trial if he is—

A.A. 50 (3).

(1.) The prosecutor :

Ib.

(2.) A witness for the prosecution :

A.A. 50 (2).

(3.) The convening officer :

A.A. 54 (4). (4.) The confirming officer :
A.A. 50 (3). (5.) The accused's Commanding Officer :
Ib. (6.) The officer who investigated the case :
R.P. 19. (7.) The accused's Squadron or Company Commander who made the preliminary inquiry into the case :
Ib. (8.) The officer who took the summary of evidence :
Ib. (9.) A member of a Court of Inquiry which investigated the facts of the case :
Ib. (10.) Personally interested in the case.

Whenever a Court of Inquiry has been held respecting a matter on which a charge is founded the President is
Man. 561. to enter in red ink and sign a footnote to the effect that he has compared the names of the officers who served on the Court of Inquiry with those detailed to serve on the Court.

R.P. 23. As regards (*b*) they must see that—
(1.) The charge appears to be laid against a person subject to military law and to the jurisdiction of the Court :
(2.) Each charge discloses an offence against the Act and is properly framed.

If not satisfied they must adjourn and report to the convening officer.

Prosecutor.

The prosecutor takes his place, and his name is recorded in the proceedings. He must be subject to military law,
K.R. 575. and is in practice an officer. He is an officer of justice whose duty it is to assist the Court in determining the truth, not to obtain a conviction unfairly. He must act fairly towards the accused, and bring out in evidence any facts that tend in favour of the accused as well as those
R.P. 60. against him. It is the duty of the Court to stop him if he refers to any irrelevant matter or indulges in any undue violence of language. He informs the Court immediately before the arraignment if the accused has elected to be tried. It is also his duty to inform the Court if the accused will suffer any additional punishment consequential to the finding besides that awarded by the sentence
R.P. 46 (E). of the Court, as, for example, forfeiture of medals under Appendix IX of the New Zealand Regulations. He can-

not be objected to by the accused. He can make an R.P. 25 (B).
opening address; he examines the witnesses for the prose- R.P. 39.
cution, and cross-examines those for the defence. If the R.P. 40.
accused does not call witnesses in his defence the prosecutor may address the Court a second time for the purpose of summing up. If the accused has called witnesses he may reply to the accused's case for the defence. He should not give evidence except to prove a date or R.P. 41.
other formal matter, or to produce documents. If it is necessary for him to give evidence, he must be sworn, and should be the first witness.

If the accused has not already been present during the R.P. 62.
preliminary proceedings, he is now brought before the Court. Except during such times as the Court is closed for the consideration of any question, all proceedings must take place in open Court and in the presence of the accused.

Counsel.

Either the prosecutor or the accused may have counsel R.P. 87–93.
to assist him at a General Court-martial or a District Court-martial. Counsel will not be engaged for the prosecution without the sanction of the Minister for Defence. The accused must usually give seven days' notice of his intention to employ counsel, and similarly seven days' notice must be given to him of the intention to employ counsel for the prosecution. By the term "counsel" is meant a barrister or solicitor. Counsel are bound by the Rules of Procedure, and if they are guilty of unprofessional conduct can be reported to a civil Court. A counsel has all the rights and duties of the party for whom he appears.

An officer subject to military law may act as counsel for an accused person. An accused has the right, instead of having counsel, to be assisted by a "friend." A "friend" sits beside the accused and advises him, but is not permitted to take any part in the proceedings in the way of addressing the Court or examining or cross-examining witnesses. Before the proceedings commence accused must be required to state whether any officer with him will act as counsel or as a "friend."

Challenge.

The names of the President and members are now read over in the hearing of the accused, and they severally answer to their names, and the accused is then asked whether he objects to be tried by any of them. He can-
R.P. 25 (note). not object to the whole Court collectively, though he can object to every individual officer on it. If he objects to
A.A. 51. the President, the objection to him will first be considered; if to members other than the President, the objection against the junior members will first be dis-
R.P. 25. posed of. The officer objected to withdraws, and takes no part in deciding the objection. The accused states the ground of his objection, and may call witnesses in support, but they do not give evidence on oath, as the Court, not being yet sworn, has no power to administer an oath. The prosecutor can call witnesses to rebut the evidence adduced by the accused. The Court then come
A.A. 51. to their decision in closed Court. If the objection is to the President, and one-third of the members are in favour of it, it is allowed; if to a member, it is not allowed unless one-half are in favour of it. If the Court disallow the objection, their decision is communicated to the accused and the trial proceeds. If an objection against the President is allowed, the senior member will adjourn the Court and report to the convening officer, who will appoint a fresh President. If an objection against a member is allowed and there are waiting members, one of them will be taken; if there are no waiting members and the
R.P. 18. Court is reduced below the legal minimum, they must adjourn for a fresh member to be detailed, otherwise, if not below the legal minimum, they may go on with the reduced members if they think it expedient, as already noted. Whenever a Court adjourns for a fresh President or members to be appointed, the convening officer may, if he thinks fit, convene a fresh Court instead. No new member can be added to a Court once the trial has commenced. The accused must be given an opportunity of challenging any officers detailed to take the place of those objected to.

Oaths Act, 1910 (N.Z.). The Court are then sworn—the form of oath is given in section 52 of the Army Act, but this form must be preceded by the words "You swear by Almighty God that," &c. If there is a Judge-Advocate, he first administers R.P. 26
the oath to the President and then to all the members collectively; if there is no Judge-Advocate, the President first administers the oath to the members collectively, and then one of the members does so to the President. The oath is administered in the following manner: Every one in Court except those on duty under arms removes his head-dress and stands up. The person to be sworn takes a Bible in his ungloved right hand, and on the oath being read over to him by the person administering the oath answers "I do."

The obligations undertaken by the Court on being sworn are first those of a jury—*i.e.*, that they will well and truly try the accused according to the evidence; next, A.A. 52.
that they will impartially administer justice according to the Army Act; and, lastly, that of secrecy—*i.e.*, that they will not divulge the sentence before confirmation, or the vote of any member at any time, unless required by law to do so.

If there is a Judge-Advocate, he is then sworn to secrecy, R.P. 27.
and if the services of a shorthand-writer or interpreter are necessary these officials are also sworn to do their duty impartially to the best of their power. The form of these oaths is given in Rule 27 of Rules of Procedure, but must Oaths Act, 1910 (N.Z.).
be preceded, as must all oaths as before mentioned, with the words "You swear by Almighty God that," &c. The accused is given an opportunity of objecting to either of R.P. 72 (C).
these last two before they are sworn, but he cannot object R.P. 25 (B).
to the Judge-Advocate.

Young officers are required to attend Courts-martial for K.R. 572.
the first twelve months after they join the service, and if any such are present they are now sworn to secrecy (Form of Oath 27 R.P.), as they are allowed to remain in Court when it is closed.

If any person who is required to take an oath in con- A.A. 52.
nection with a Court-martial objects on conscientious grounds to do so, or states that it would have no binding effect on his conscience, then he may be permitted to make a solemn declaration instead in the form set out in Rule 28 of the Rules of Procedure. This will have the

same effect as taking an oath, and he can be punished for falsehood as though he had sworn falsely. In any case an oath may be administered in such form and with such ceremonies as the person may state will be according to his religion binding on him. A Hebrew is sworn on the Old Testament, and keeps his head-dress on whilst taking the oath.

R.P. 71. A Court may be sworn to try any number of accused persons then before it, whether they are to be tried separately or jointly, each having the right to challenge any of the Court before they are sworn. If the accused are to be tried separately, the Court will then proceed with one case, and take the others in succession afterwards.

R.P. 15. Any number of accused persons may be jointly tried for an offence they are charged with having committed collectively, but any of them can claim separate trial on the ground that the evidence of one or more of the accused about to be tried with him is material to his defence, and if the convening officer or the Court is satisfied that this is so, his claim must be allowed. If they are tried together each will have a separate right of challenge, will make a separate plea and defence, and the finding and sentence must be separately recorded.

Arraignment.

R.P. 31. Man. 568. The accused is arraigned by each charge on the charge-sheet being read over to him and his pleading to it. It is usual to order the witnesses out of Court at this stage. If the accused has elected to be tried instead of being dealt with by his Commanding Officer, the prosecutor now informs the Court of that fact. The accused on being

R.P. 32. called on to plead may object to any charge on the ground that it does not disclose any offence against the Act or is not properly framed, and the Court will decide whether

R.P. 33. his objection is valid or not. If there appears to be any mistake in the name or description of the accused, the Court can amend the charge-sheet at any time during the trial. If, however, the charge is defective in any other way, the Court must, if they have not begun to examine witnesses, adjourn for the convening officer to make the amendment. If they have begun to examine witnesses,

the charge-sheet cannot be amended at all; but justice can often be done by a special finding under Rule 44.

Before pleading to a charge the accused may offer a R.P. 34. "special plea to the jurisdiction of the Court"—that is, that they have no power to try him at all on any charge whatever. He may adduce evidence in support of this plea, and the prosecutor can call evidence in reply. If the Court overrule his objection, they go on with the trial; if they allow it, they will adjourn and report to the convening officer. If in doubt as to whether they should allow it, they may adjourn and refer to the convening officer for his advice, or, if this delay would be inconvenient, they may record a special decision and proceed with the trial, subject to their having jurisdiction. The usual grounds for such a plea would be that the accused was not subject to military law or not amenable to that description of Court.

When called upon to plead he may plead "Guilty" or R.P. 35. "Not guilty." Before recording a plead of "Guilty," however, the Court must be satisfied that the accused fully understands the meaning and consequences of his plea and the difference in the procedure which it entails. If Ib. (note) and they are not satisfied on this point, they will proceed with Man. 568 his trial as though he had pleaded "Not guilty." It must be recorded on the proceedings that this rule has been adhered to. If he refuses to plead, or does not plead intelligibly, a plea of "Not guilty" will be recorded.

The accused may offer a "plea in bar of trial" at the R.P. 36. same time as his general plea of "Guilty" or "Not guilty." The grounds for such a plea are,—

(1.) That he has been previously acquitted or convicted by a civil Court or Court-martial, or dealt with summarily by his C.O. for the same offence:

(2.) That the offence has been pardoned or condoned by competent military authority:

(3.) That more than three years have elapsed since the offence was committed.

If the Court allow the plea, they will record their finding and adjourn and report to the convening officer. If they overrule the plea, they will go on with the trial.

To be a bar the previous trial must have been a legal one by a properly constituted Court, and for the same offence arising out of the same set of facts. Pardon or condonation must be the deliberate act of a person having power to dispose of the offence acting in his magisterial capacity with a full knowledge of the facts.

R.P. 62. If there are separate charge-sheets, the accused will be arraigned and the trial proceed separately on each charge-sheet up to the finding, inclusive. The trials on the several charge-sheets will be in such order as the convening officer directs. If the convening officer thinks fit, he can direct that, on the accused being convicted of any charge in any charge-sheet, he need not be tried on the other charge sheet or sheets, and the Court will then finish the trial as though there were no other charge-sheets. Whenever a charge-sheet contains more than one charge, the accused can claim to be tried separately on each charge, on the ground that he would otherwise be embarrassed in his defence, and if the Court think the claim good, they should allow it and proceed accordingly.

R.P. 37. When the accused pleads guilty to some charges and not guilty to others in the same charge-sheet, the Court will first proceed with the trial of those charges to which he has pleaded not guilty. If, however, they are alternative charges, the Court can enter a plea of "Not guilty" to those to which he has not pleaded guilty; or, if they think he has pleaded guilty to the less serious of the alternative charges to avoid the punishment entailed by the graver, they may proceed as though he had not pleaded guilty to any.

The accused may at any time withdraw a plea of "Not guilty" and plead guilty, and if the Court, as already noted, are satisfied he understands what he is doing, they may record the plea and proceed with the remainder of the trial accordingly.

A. *Proceedings on a Plea of "Not guilty."*

R.P. 39 (A). *Prosecution.*—The prosecutor may, if he wishes, make an opening address or may hand in a written address.

R.P. 90. If counsel has been retained for the prosecution, he should make the opening address, and, in fact, should both at this stage and throughout the proceedings act for and in the place of the prosecutor, who by the employment of counsel abrogates his position and takes no further part in the proceedings.

It may here be generally noted that wherever in the proceedings any addresses are made they may be either oral or written. When an address is oral only so much of it as the Court think necessary need be recorded, provided that such a record of anything said for the defence must be kept as will enable the confirming officer to judge of the defence, and whenever the prosecutor or the accused requests that any particular matter in his address be recorded, the Court should enter it in the proceedings. Whenever the address is written it will be read, marked with some identifying mark, signed by the President, and attached to the proceedings. R.P. 95 (D). Man. 565.

The witnesses for the prosecution are then called, sworn, and examined by the prosecutor. Every witness must be sworn by one of the Court or the Judge-Advocate when there is one, or he may make a solemn declaration under the circumstances before noted. For forms of these see Rule 82 of the Rules of Procedure. If a witness refuses to be sworn or to answer questions or produce documents which he can legally be required to answer or produce, he may, if subject to military law, be arrested in order to be proceeded against under A.A. s. 28, and, if a civilian, his offence can be certified by the President to a civil Court, who will deal with the contempt as though it had taken place before that Court. The evidence of all witnesses is taken down in a narrative form as nearly as possible in the words used; but wherever the prosecutor, accused, Judge-Advocate, or the Court think it material the exact question and answer are to be recorded verbatim. If any objection is made to any evidence, the Court may, if they think fit, record the proposed evidence and the fact that it had been objected to and their decision upon the objection. When the examination in chief is ended, the accused can cross-examine the witness, who, if necessary, may be re-examined by the prosecutor. Any member of the Court or the Judge-Advocate may, with the permission of the Court, ask any witness any ques- R.P. 89. A.A. 28. A.A. 126. R.P. 95. R.P. 85.

tions. Such questions should usually be put after the parties to the trial have finished the examination or cross-examination of the witness. These questions may be put at any time before the second address of the accused, and a witness may be recalled at the request of either party for this purpose, and will be examined on his former oath. The Court may, if they think fit in the interest of justice, call or recall any witness at any time before the finding. Every question may be put direct to the witness by the person asking it. The evidence of each witness is read to him at the conclusion of his examination to see that it has been recorded correctly, and to give him an opportunity of correcting any slips. It should be recorded on the proceedings that this has been done. The witness will then withdraw, as, except the prosecutor and the accused, no other witness should be in Court while another witness is under examination.

R.P. 86.

R.P. 83.

R.P. 75. The examination of all the witnesses for the prosecution is conducted in a similar manner. The prosecutor is not bound to call all the witnesses whose evidence is in the abstract or summary, but he should call any whom the accused wants called in order to give him an opportunity of cross-examining them. If he wishes to call a witness whose name is not in the summary, he must give reasonable notice to the accused of his intention, or the Court may allow an adjournment to enable the accused to prepare his cross-examination.

R.P. 76.

R.P. 78. After the assembly of the Court the President is the person to procure the attendance of any witnesses who may be required. If soldiers, they are ordered to attend by the proper military authority; if civilians a summons is served on them by the police. (For form *vide* R.P., App. II, p. 580.)

R.P. 40. *Defence.*—At the close of the prosecution the accused will be called upon for his defence, and will be informed of his right to give evidence himself, subject to cross-examination, and will be asked whether he wishes to call any witnesses for his defence. The subsequent procedure will vary according to what his replies to these questions are. The different cases will now be considered in turn.

(1.) The accused calls witnesses in defence: The accused, or his counsel if he has one, can make an opening address, and the rules already noted for the opening address for the prosecution apply, except that the accused is allowed more latitude in his remarks than would be permissible to the prosecutor. The accused may then give evidence himself if he wishes, and call his other witnesses in turn. The rules for the conduct of the examination of witnesses for the prosecution apply to those for the defence, except, of course, they are examined by the accused or his counsel if he has one, and cross-examined by the prosecutor. If the accused wishes to give evidence himself he should usually, but need not necessarily, do so first, before he has heard the other witnesses give their evidence. Unless the Court decides that there are reasons against it (such as his violent conduct), the accused while giving evidence will do so from the place where the witnesses stand. After all the evidence for the defence has been taken the accused or his counsel can make a second address summing up his case; and, lastly, the prosecutor is entitled to make a second address replying to the whole case.

R.P. 41 and notes.

R.P. 60 (C).

R.P. 80 (2).

R.P. 41.

(2.) The accused gives evidence himself, but calls no other witnesses except as to character: The accused will give his evidence as above described. The prosecutor can then make a second address summing up the evidence for the prosecution and commenting on the accused's evidence. The accused or his counsel may then make an address in his defence. He may also call any witnesses as to character. The prosecutor may rebut this evidence as to character by producing proof of previous convictions or the accused's conduct-sheet, and may call witnesses to prove such, but he cannot again address the Court.

R.P. 40 and note (B).

R.P. 86 (B).

(3.) The accused calls no witnesses (except as to character): The prosecutor will make his address (if any) at once, but he must not comment on the fact of the accused declining to give evidence. The accused can then make an address in his defence and call any witnesses as to character as in the last case, and the prosecutor has the same right of rebutting any such evidence. If the accused is assisted by counsel or an officer having the

R.P. 40 and note (B).

R.P. 94.

rights of counsel, and does not wish to give evidence himself, but wishes to give his own account of what happened, he will do so at the close of the prosecution and before any address made by such counsel. His address, like all others, can be oral or written, but he is not sworn, and no question may be put to him by the Court or any other person. If he makes such a statement, the procedure will be the same as in (1) above.

R.P. 42. At the conclusion of the whole case the Judge-Advocate, if there is one, will sum up, unless he and the Court agree that a summing-up is unnecessary, which decision must be entered on the proceedings. After this no other

R.P. 43 (A). address will be allowed, and the Court will be closed to consider their finding. When the Court is closed every one retires except the members of the Court, the Judge-Advocate, and officers there for instruction.

R.P. 69. *Finding.*—Each member must give his opinion on each charge, commencing with the junior. If there is a Judge-Advocate, the opinions are taken by him; if there is not, then by the President. A majority of the Court decides, but if the votes are equal, the accused is given

A.A. 53 (8). the benefit of the doubt and acquitted. If this acquittal relates to all the charges in a charge-sheet, the President

R.P. 45. dates and signs the proceedings, and the accused is brought in and the finding read to him in open Court, and he is released at once.

R.P. 44 (A). The finding will be recorded as a finding of "Guilty," "Not guilty," or "Not guilty and honourably acquit him of the same." This last formula, however, should

Ib. (note). only be used when the offence charged against the accused is disgraceful and such as to tarnish his reputation, and when the accused has come through the ordeal of the trial without the least stain on his character.

R.P. 44 (B). The Court may also record a "special finding." The most usual cases for this are—(1) when they find the facts proved in evidence differ from the particulars in the charge, but that the difference is not so material as to have prejudiced the accused in his defence; (2) under the provisions of section 56 of the Army Act, which allows a Court to find a person charged with certain offences guilty of other cognate offences therein named; (3) when

there are alternative charges and the Court are in doubt as to which charge the facts proved amount to, they may refer to the confirming authority for an opinion, or, if this is impossible, may come to a finding of facts and declare the accused guilty of whichever charge these facts in law constitute; (4) they may find the accused guilty, but insane at the time he committed the offence; (5) they may find that by reason of insanity the accused is unfit to take his trial.

(B.) *Proceedings on Plea of "Guilty."*

The Court will find the accused guilty, and will record R.P. 35 (B). the finding on the proceedings. As has already been noted, before accepting the accused's plea of "Guilty" the Court must be quite satisfied that he fully understands the nature R.P. 37. of such plea. If the trial has proceeded on other charges on the same charge-sheet to which he has pleaded not guilty, those charges to which he has already pleaded guilty will be read to him again on the Court being re-opened.

The summary of evidence will then be read, marked and signed by the President, and attached to the proceedings. If there is no summary, sufficient evidence will be taken to enable the Court to determine their sentence and to allow the confirming officer to know the circumstances under which the offence was committed. The accused may then make any statement he wishes in mitigation of punishment, and if necessary the Court may allow him to call witnesses in support of his statement. He can also call witnesses as to character. If from the statement of the accused or the summary it appears that after all he did not understand the nature of his plea of "Guilty," the Court must alter the record and proceed as though he had pleaded not guilty.

Proceedings on Conviction.

In any case where the Court has convicted the accused R.P. 46. of any charge, whether in consequence of his plea of "Guilty" or after a plea of "Not guilty," they will before determining their sentence take evidence as to his

previous character and service. This evidence is usually given by an officer, generally the prosecutor, handing in the "statement as to character and service of the accused" (N.Z.M.F. 296). The witness producing this statement must, of course, be sworn, and he must identify the accused as the person named in the statement, and declare that he has compared the statements with the regimental books and found them true extracts. The accused can cross-examine this witness, and can call for the books to be produced, and can call witnesses to rebut the evidence thus given against him, and after all this evidence is finished can address the Court thereon.

A.F.B. 296.

If the finding of the Court renders the accused liable to any exceptional punishment in addition to that awarded by the Court the prosecutor must call attention to this fact, and the Court must inquire into the nature and amount of such extra punishment.

If a local order exists drawing attention to the unusual prevalence of any offence, and it is desired to bring it to the notice of the Court, the prosecutor will now produce a certified copy of the order, which will be attached to the proceedings.

Man. 576.

Sentence.

The Court will now be closed to consider their sentence. Every member must give his vote for the sentence, even though he had been individually in favour of an acquittal. The sentence must be determined by a majority of the Court, except that sentence of death cannot be passed unless two-thirds at least of the members are in favour of it. When the opinions of the members as to the nature of the punishment differ and various punishments are suggested, the most lenient named must be put to the vote first, and, unless a majority of the Court are in favour of that, then the next most lenient, and so on till some one punishment has been determined by a majority. Similarly, if opinions differ as to the amount of the punishment to be awarded, a similar course will be adopted. In each case the voting will begin with the junior member.

R.P. 69.

A.A. 48 (8).

R.P. 69 (note).

In determining the sentence the Court should consider the nature of the offence and the service and previous character of the accused, and must bear in mind any

K.R. 583.

aggravating or extenuating circumstances, and the prevalence of any particular crime in any garrison or corps. They must also have regard to any consequences involved by their finding or sentence, such as loss of medals under Appendix IX of the New Zealand Regulations. Care must be taken to discriminate between offences due to youth or temper and those showing premeditated misconduct.

If it is considered necessary to award a sentence of imprisonment (as distinguished from detention), discharge with ignominy should be added. The K.R., para. 583, give rules as to the amount of detention or imprisonment which should usually be awarded for the various offences therein named, and Courts-martial should not depart from these amounts without good reason. In framing sentences the following rules must be observed :—

(1.) Terms of imprisonment or detention not amounting to six months will be awarded in days. K.R. 585.

(2.) Terms of one year or two years will be awarded in years.

(3.) All other terms will be awarded in months or months and days.

The word "month" in a sentence of imprisonment or detention is interpreted as a calendar month. R.P. 134 (c).

If a Court recommend an accused to mercy they must give their reasons for such recommendation, and may, if they think fit, enter in the proceedings the number of votes by which any such recommendation was lost or carried. R.P. 49.

The proceedings will then be dated and signed by the President and by the Judge-Advocate (if any), and transmitted to the confirming authority as directed in the order convening the Court.

Confirmation and Execution of Sentences.

All findings and sentences of Courts-martial except a finding of acquittal require confirmation by the officer having power to confirm the proceedings of such Court, and until so confirmed are of no effect. The authorities having power to confirm the different descriptions of Courts-martial have already been stated. The proceedings of a Court-martial may in doubtful cases be submitted to A.A. 54 (3) (6).

N.Z.R. 70. the Judge-Advocate-General under N.Z.R. 70 to advise as to whether such proceedings are regular and legal. In the event of it being necessary through any flaw to quash the proceedings, he makes recommendations to the Minister of Defence with this object.

A.A. 54 (2). (i.) *Revision.*—A confirming officer can send back the finding or sentence, or both, for revision once, but only

R.P. 51. once. In this case the Court reassembles pursuant to the order, and if possible all the original members must be

R.P. 52. present. If the President is absent or the Court is reduced below the legal minimum there can be no revision, and the Court must adjourn and report to the confirming officer. The proceedings are conducted in closed Court, and the Court cannot take any fresh evidence. If the sentence only is sent back for revision they cannot alter the finding; if the finding is revised and the new finding requires a sentence the Court must pass sentence afresh, even though in the words of the former sentence, as the revocation of the finding *ipso facto* revokes the sentence, and unless the Court pass a fresh sentence the accused will have no sentence to undergo. The Court can, if they think right, adhere to their former finding or sentence. The sentence cannot be increased on revision, though it can, of course, be reduced; but where the first sentence was a nullity it is not an increase to pass a valid sentence on revision. In the case of a finding of acquittal, which

R.P. 51 (A). requires no confirmation, the officer who would otherwise have confirmed cannot make any remarks on the proceedings, but if he thinks anything in the case requires notice he must make a separate report to superior authority.

A.A. 57. (ii.) *Remission, &c.*—When confirming the proceedings, either original or revised, the confirming officer can mitigate, remit, or commute any or all of the sentence, or may suspend the execution of the same for such time as may seem expedient.

Mitigation is the awarding of a less amount of the same species of punishment, as by reducing the length of a sentence of imprisonment, and is really a partial remission.

Remission may be of the whole or part of the sentence, as where a sentence of imprisonment with hard labour is entirely remitted, or the term shortened, or the hard labour remitted.

Commutation is changing one kind of punishment for another lower in the scale laid down in section 44.

The confirming officer may also refuse confirmation, in A.A. 54 (5). which case the proceedings are annulled and the accused can be tried again; or he may refer the proceedings to superior authority for confirmation. When the confirming authority finds it necessary to comment upon the proceedings of a Court-martial, whether original or revised, his remarks will be separate from and form no part of the proceedings. They will be comunicated in a separate minute to the members. In no case will he comment on a finding of "Not guilty," or upon the inadequacy of a sentence. If the sentence is informally expressed the R.P. 56 (A confirming officer can vary the form, and if it is in excess of that allowed by law he can reduce it to what is legal, and can then confirm the sentence so altered; but he cannot vary an altogether illegal sentence in this way.

(iii.) *Promulgation.*—The proceedings of all Courts- R.P. 53. martial are to be promulgated in such manner as the confirming officer directs, or according to the custom of the service. They are usually read out on parade, but in any K.R. 593. case the charge, finding, recommendation to mercy (if A.A. 53 (9). any), sentence, and minute of confirmation must be communicated to the accused. The date of promulgation is K.R. 593. entered on the proceedings.

(iv.) *Execution of Sentences.*—The confirming officer is A.A. 57. responsible for the execution of the sentence, and will give the necessary orders for carrying it out; or he may, if necessary, suspend the execution of it for such time as seems expedient.

(v.) *Preservation of Proceedings.*—The proceedings of R.P. 98. all Courts-martial (except Regimental Courts-martial) are after promulgation sent to the Judge-Advocate-General, and are there preserved for seven years from the date of confirmation in the case of a General Court-martial, or three years in the case of a District Court-martial. The proceedings of a Regimental Court-martial are kept with the unit till after the next annual inspection, after which they are sent to the officer in charge of the records of the corps, who preserves them for three years from the date of confirmation.

During the time the proceedings are preserved the accused has the right to obtain a copy of them or any part of them on payment of the actual cost of the copy, not exceeding 4d. for every folio of seventy-two words.

Contempt of Court.

Contempt of Court by a person subject to military law can be dealt with under section 28 of the Army Act, and by a person not subject to military law under section 126.

Courts of Inquiry and Boards.

There can be two classes of Courts of Inquiry—(1) Special Courts of Inquiry under sections 67–71 of the Defence Act, 1909, (2) Courts of Inquiry as recognized by the Rules of Procedure and King's Regulations.

(1.) *Special Courts of Inquiry.*

D.A. 1909-67. The General Officer Commanding, or any O.C. District in cases arising within his district, may from time to time summon commissioned officers of the Defence Forces under their command to form a Court of Inquiry, consisting of not less than three such officers, of whom the senior officer present shall be President—

(*a.*) To inquire into any matter relating to Government property which in the opinion of the Minister of Defence requires investigation; or

(*b.*) To examine into the truth of any charge or complaint preferred against any officer, N.C.O., or any other member of the Defence Forces.

Ib. 70. This Court has no judicial functions, and the duties are confined to taking evidence on oath and transmitting such evidence without comment to the General Officer Commanding for submission, through the Minister of Defence, to the Governor for his decision. So long as ample opportunity is given to an accused person to place his case fairly upon the records of the proceedings, no strict rules of procedure need be followed as in the case of a Court-martial.

(2.) *Courts of Inquiry under the Rules of Procedure and King's Regulations.*

(R.P. 124; K.R. 666, 667.)

A Court of Inquiry may be assembled by any Commanding Officer to assist him in arriving at a correct conclusion on any subject into which he cannot conveniently inquire himself. Such Court has no judicial power, but will merely collect evidence and report. The Court will give no opinion on any point involving the conduct of any officer or soldier unless so directed by the convening officer. The Court cannot compel the attendance of civilian witnesses, and the evidence will only be taken on oath if the convening officer so directs. Such Court may consist of any number of members of any branch of the service, but three will usually be enough, the senior either being appointed President by name or acting as such by virtue of his seniority. Whenever the inquiry affects the character of any officer or soldier he must be given an opporaunity of being present throughout and of making any defence he thinks fit.

No Court of Inquiry involving expense will be held without the authority of the O.C. District. N.Z.R. 219.

Committees or Boards of Inquiry.

Committees and Boards differ from Courts of Inquiry only in so far that the objects for which they are assembled should not involve any point of discipline. In cases of illness or injury to an officer or soldier during the performance of military duty a Board will be assembled as soon as possible by the C.O., for the purpose of investigating the cause of such illness or injury. The proceedings will be forwarded to district headquarters. When after investigation by a Board of Inquiry a C.O. is of the opinion that any injuries incurred by an officer or soldier of the Territorial Force while on duty will lead to incapacity or loss of employment he may recommend to the O.C. District that the soldier be awarded pay and medical expenses as laid down in paragraphs 601 to 606 of the N.Z.R. No Board or Committee involving expense will be held without the consent of the O.C. District.

Evidence.

(1.) *What must be proved.*

With certain exceptions, the charge as stated in the charge-sheet must be proved, and unless the evidence supports this the accused must be acquitted even though it may have been shown that his conduct amounted to some other offence. The exceptions are—(1) where the distinction between the two offences is one of degree, in which case an accused charged with the more serious offence may be convicted of the lesser; and (2) where the distinction between the two offences is merely technical.

It is sufficient if the substance of the charge is proved. Minor details which are not essential to the constitution of the offence may be treated as surplusage. As a rule dates and places are immaterial, but in certain charges time and place are material, and must be proved as stated—*e.g.*, in a charge of sentry asleep on his post; but in any case the discrepancy between the dates stated in the charge and those proved in evidence must not be too great or the Court cannot convict. If the substance of the charge is proved the Court can convict, and by a special finding can correct any immaterial discrepancies.

Certain facts are assumed to be known to the Court, and do not require to be proved in evidence. The Court is said to take "judicial notice" of these facts. The principal matters so judicially noticed are Public Acts of Parliament, the general proceedings of Parliament, the rules of practice of the Supreme Court, the Accession of the King, the existence of any State and Sovereign recognized by the King, certain Seals, the extent of the British Empire, the commencement and termination of war between the King and any other Sovereign, the divisions of time, &c. Courts-martial would also take judicial notice of the relative rank of officers and non-commissioned officers, and the general duties appertaining to various officials; also as to whether an officer were "in the execution of his office" or not, whether it was the duty of an escort to apprehend a soldier, &c. The Rules of Procedure are judicially noticed by all Courts, civil and military.

(2.) *Burden of Proof.*

In considering upon which side the burden of proof or disproof of a criminal charge lies the first rule is that the law presumes every one to be innocent until legally convicted, hence the duty of disproving a charge against him does not fall upon the accused until the prosecutor has brought forward evidence establishing facts from which his guilt will be inferred, unless he explains away this presumption of guilt raised against him. The second rule is that he who states any fact must prove it. Hence, taking these two rules together, the burden of proof will at first lie on that party against whom the judgment of the Court would be given if no evidence at all were produced. In certain cases the law requires an accused to prove any lawful excuse or authority or the absence of fraudulent intention, and this is especially so when the matter is peculiarly within the knowledge of the accused. The burden of proof as to any particular fact lies on the person wishing the Court to believe it, unless the law provides that proof of this fact shall lie on any particular person. As the trial proceeds the burden of proof may shift from the prosecutor to the accused and then back to the prosecutor.

On proof of an unlawful act having been committed by the accused the law presumes a guilty intention, and the onus of proving any justification or excuse lies on the accused. The law, moreover, always presumes that any one intends the usual and natural consequences of his act.

(3.) *Admissibility of Evidence.*

The chief rule as to the admissibility of evidence is that it must be relevant—that is, that it must tend to prove or disprove the charge. No hard-and-fast line can be drawn between facts that are relevant and those that are not, but each case must be treated on its own merits.

(4.) *Hearsay.*

Hearsay is the oral or written statement of a person who is not produced in Court conveyed to the Court either by a witness or the instrumentality of a document. It

will thus be seen that the term includes written statements as well as verbal ones. As a rule, hearsay evidence is inadmissible. The reasons for excluding such statements are—(1) They have no claim to credibility, because not made under the sanction of an oath or its equivalent; (2) the party affected by them has not had the opportunity of cross-examining their author; and (3) the author of the statements is not before the Court so that they can judge by his demeanour and manner of giving his evidence as to his credibility.

This rule, however, does not exclude statements which have been made in the presence of the accused from being given in evidence, not in proof of the truth of the facts alleged in the statement, but in order to show the conduct of the accused on hearing the statement made.

(5.) *Evidence as to Character.*

Evidence of the accused's bad character cannot be given by the prosecution unless he has called evidence to show he has a good character, in which case the prosecutor can call witnesses to rebut this evidence. On the other hand, evidence as to the character is relevant for the defence, and an accused can always call witnesses to prove his good character, or he may call for the production of his conduct-sheet. But it must be remembered that the good character he seeks to prove must be more than general—that is, the special virtues he attempts to show he possesses must be such as are antagonistic to the commission of the particular crime with which he is charged. For instance, it would be no use for a man charged with cowardice to prove he was always a clean, smart soldier, and respectful to his officers; or, on the other hand, for a man charged with theft to show he had a known character for bravery. Care must be taken to understand that as regards evidence as to character what is now under consideration is evidence as to character given *before* the finding, with a view to proving or disproving the charge, and this must be quite distinct from the evidence as to character given *after* the finding of "Guilty," which is only given to assist the Court in awarding a proper sentence.

(6.) *Circumstantial Evidence.*

It is usual to distinguish between two kinds of evidence —viz., direct and circumstantial (or indirect). By the former we mean the evidence of a person who actually saw or otherwise observed with his senses the fact to which he testifies. Indirect or circumstantial evidence is evidence of facts from which the main fact of the accused's guilt or innocence may be presumed. In comparing them it must be remembered that the difference is not one of degree (as in the case of primary and secondary evidence), but of kind. Circumstantial evidence is not inferior to direct evidence, and may be superior to it; for "facts cannot lie," while witnesses may (and do). But, on the other hand, it must be remembered that the inference suggested by facts is not always the true one, and therefore before a Court convicts on circumstantial evidence only they should be satisfied that the facts proved are not only consistent with the accused's guilt, but are inconsistent with his innocence.

(7.) *Competency of Witnesses.*

As a rule all persons are competent witnesses; the only exceptions being in the case of one prevented, in the opinion of the Court, by extreme youth or disease affecting his mind from understanding the facts he is to testify to or from realizing the necessity of speaking the truth. A lunatic—*i.e.*, one who has lost his reason—may give evidence during lucid intervals. A drunken person is incompetent while under the influence of drink, but may be examined when sober. There is no legal age which fixes the competency of a child. The Court must decide in each case by the intelligence of the proposed witness and by examining it to see if it understands the obligations of an oath. Former rules excluding witnesses on the ground of want of religious belief or general bad character, or because they are parties to the case, are no longer the law; but, as already pointed out, it must be distinctly remembered that it by no means follows that all evidence that is admissible is therefore credible, and in weighing the evidence the Court must carefully consider any facts likely

to diminish the credibility of the witnesses who gave it. A member of a Court-martial is incompetent to give evidence for the prosecution, but is a competent witness for the defence; though, of course, if it is known that accused intends to call any officer in his defence such officer should not be detailed to serve on the Court. An accused can, if he wishes, give evidence in his defence at any stage of the proceedings, but he cannot be compelled to give evidence, and no comment may be made by the prosecution upon the fact of his having refused to do so. A like rule applies to the husband or wife of an accused, and in the case of accused jointly tried they may be witnesses for the defence, but only if the accused chooses to call them.

(8.) *Privileges of Witnesses.*

Although a witness may be competent to give evidence it does not follow that he can be compelled to do so. For example, an accused is competent to give evidence in his defence, but he cannot be compelled to do so against his will, neither can his wife be called as a witness unless he requests that she may be so called in his defence. In the case of witnesses other than the accused there are many questions which they are not compelled to answer, and some which they will not be permitted to answer. When a witness is not compellable to answer a question or to produce some particular document it is because some privilege intervenes which may either be the privilege of the witness himself or of some third party.

In the first place, no witness (except the accused when giving evidence in his defence) can be compelled to answer any question or produce any document tending to incriminate himself or the wife or husband of the witness—*i.e.*, to show that he had done anything which would expose him to a criminal charge. This privilege does not extend to answers tending to expose him to civil liability—*e.g.*, an action for debt. When the accused is giving evidence on his own behalf he may be asked a question that would tend to incriminate him as to the offence charged; but he cannot be compelled to answer any question tending to show that he has committed any other

offence unless (1) the proof that he has committed this other offence is admissible to show that he is guilty of the offence now charged; or (2) he has asked questions of the witnesses for the prosecution to prove his own good character, or given evidence to this effect, or if the conduct of the defence has been such as to involve imputations on the character of the prosecutor or his witnesses; or (3) he has given evidence against any other person charged with the same offence. The witness may if he likes waive his privilege and answer at his peril. A witness cannot be compelled to answer any question relating to State affairs without the permission of the head of the Department concerned. Similarly, a witness cannot be compelled to answer any question the answer to which would tend to disclose the names of persons by or to whom information was given as to the commission of offences.

No question may be put to a witness as to the votes of the members of any Court-martial previously held.

Neither a husband nor wife is compellable to disclose any communication made to him or her by the other party during marriage, and this privilege continues for the benefit of the survivor even after the death of one of the parties.

A legal adviser is not competent, without his client's express consent, to disclose any communication made to him as such legal adviser by or on behalf of his client, whether such communication was oral or documentary, and whether or not the relationship has terminated. This privilege does not extend to any communication made in furtherance of a criminal purpose, or any fact he may have observed during the course of his employment showing a crime or fraud has been committed since the commencement of his employment, or any fact he has become aware of otherwise than in his professional capacity. The expression "legal adviser" includes barristers, solicitors, their clerks, and interpreters between them and their clients. It will include an officer or other person who has acted as accused's friend at a Court-martial. The privilege is the client's, and if he chooses to waive it the witness must answer. No other relationship except this legal one gives any such privilege, and clergymen and medical ad-

visers may be compelled to disclose communications made to them in professional confidence; but it is not the custom to press for such disclosures in the case of clergymen, and several Judges have expressed themselves strongly against such a course.

(9.) *Examination of Witnesses.*

Every witness (including one producing documents) before giving his evidence must be sworn in the manner prescribed by Rule 82 of the Rules of Procedure, unless he is of a class permitted to affirm. He may then be submitted (1) to examination in chief by the party calling him, (2) to cross-examination by the opposite party, and (3) to re-examination by the party calling him. He is also liable to be examined by the Court, and the Judge-Advocate if there be one.

In the examination in chief a witness must not as a rule be asked a leading question—*i.e.*, one which suggests the answer required. The exceptions to this rule are when the questions relate only to introductory matter and not to the substance of the issue; or when the witness is very young, or is clearly somewhat deficient in understanding, and requires help to get his evidence out of him properly; or, lastly, in the case of a hostile witness. In these last cases leading questions may by the leave of the Court be put. The reason for excluding such questions is to prevent either party putting into the mouth of the witness the story he wishes him to tell. Of course, in the case of a hostile witness the reason for the rule disappears; a hostile witness being one who has been called by either party but who by his manner shows he is distinctly reluctant to give his evidence. Such an one may be treated exactly as though he had been called by the opposite side, with the one exception that the party calling him must not impeach his credit by general evidence of bad character. He has called him and produced him to the Court, and he cannot now seek to show that he is unworthy of belief. He may, however, contradict him by other evidence, or prove that he has previously made a statement at variance with his present testimony.

When the examination in chief has concluded the opposite party has the right to cross-examine. The object of the cross-examination is to impeach the accuracy, credibility, and general value of the evidence given by the witness, and to elicit facts favourable to the cross-examining party. Leading questions may be asked, and irrelevant questions put in order to throw the witness off his guard. The witness may be asked any questions which shake his credit by injuring his character, but he can decline to answer if he is entitled to claim privilege as explained in the last section. Evidence cannot be given to contradict his answers to questions which may shake his credit by injuring his character, except when (1) he is asked if he has ever been convicted of felony or misdemeanour and he denies or refuses to answer, (2) he is asked a question to show he is not impartial, (3) he has previously made an inconsistent statement, or (4) he can be shown to be a notorious liar. If the imputation conveyed by any question would only injure the character of the witness, but would not in the opinion of the Court shake his credit, they will not compel him to answer it; and no further examination on this matter will be allowed. The credit of a witness may be impeached by the evidence of other witnesses who swear that they believe him to be unworthy of belief on his oath; they may not be asked their reasons for this belief in their examination in chief, but in cross-examination they can be asked such reasons. When the credit of a witness has been thus impeached the party calling him may call other witnesses to re-establish his credit.

After the cross-examination the witness may be re-examined by the party calling him for the purpose of reconciling any discrepancies that may have arisen between the evidence given in the examination in chief and the cross-examination, or to remove any suspicion which the cross-examination may have thrown on the evidence. Such re-examination must be confined to matters arising out of the cross-examination, and cannot be used to repair omissions in the examination in chief. If new matter is by the leave of the Court introduced, then the opposite party can cross-examine further on such new matter.

All questions may be put to the witnesses directly by the party asking them without the intervention of the Court. The evidence will be taken down in a narrative form as nearly as possible in the words used, unless the prosecutor, prisoner, Judge-Advocate, or the Court consider any question and answer material, when they will be recorded verbatim. Similarly, any question objected to, with the grounds of objection and the decision of the Court, will be recorded if any of the above-named consider it necessary. At the conclusion of his evidence the evidence as taken down will be read over to the witness to give him an opportunity of correcting any mistakes either in the evidence he gave or in the way it has been taken down.

A witness may not read his evidence, but he may refresh his memory by referring to any notes, provided such notes were made by him, or with his knowledge of their correctness, soon after the occurrence to which they relate and while the facts were fresh in his memory. Such notes must, if the opposite party wish, be handed over to him for inspection, and he can cross-examine the witness on them.

APPENDIX.

N.Z.M. Form B. 281.
Army Form B. 281.

MINOR OFFENCE REPORT.

This form should also be used as the periodical RETURN OF PUNISHMENTS in all cases in which such a return is rendered. When so used it should contain all particulars required for entry on Corps Defaulter Sheets, and the heading " Minor Offence Report " will be ruled through.

Corps: . Date . Station .

Corps.	Squadron, Troop, Battery, or Company.	No.	Rank.	Name.	Place.	Date of Offence.*	Cases of Drunkenness.	Offence.	By whom reported, and Names of Witnesses.	Punishment awarded, and Date of Award.	By whom ordered.	Remarks.

* In cases of absence the commencement and termination of the absence should be stated.

NOTE.—This form, when used as a Minor Offence Report, will, after being completed by the entry in the orderly-room of all minor offences disposed of by officers commanding squadrons, troops, batteries, or companies, be attached to the Guard Report of the day.

[*Signature*] , Commanding.

N.Z. Form 252.
A.F.B. 252.

CHARGE.

.....Battery, Squadron, Troop, or Company. Charge against No. .

Place.	Date of Offence.	Offence.	Name of Witnesses.	Punishment awarded.	By whom awarded.	Remarks of C.O. with Confirmation or Reduction of Sentence.

Service: In Senior Cadets, ; in Territorial Force, : total, years.

Date of last entry in Company Defaulter Book: .

Character: .

, Commanding Battery, Squadron, Troop, or Company.

New Zealand.

Defence Act, 1909, and its Amendments.

ORDER FOR PAYMENT OF FINE UNDER THE DEFENCE ACT, 1909, AND ITS AMENDMENTS.

WHEREAS you, No. , [*Rank*] and [*name*] of , a member of the Defence Forces duly enrolled and serving as a in the , being a unit [*or* corps] within the meaning of the Defence Act, 1909, and its amendments (and hereinafter termed "the said corps"), did, as such member, commit a breach of the Regulations made under the said Acts, to wit(1).

Now, I, , one of His Majesty's commissioned officers and the officer in command of the said unit [*or* corps], in pursuance of the powers in me vested under and by virtue of the Defence Act, 1909, and its amendments, as such commanding officer as aforesaid, do hereby order that you, the said , shall pay a fine of for the breach of such Regulation; and I do further order that such fine shall be paid by you, the said , to , the officer commanding the said unit [*or* corps], within seven days from the date of the service hereof upon you, otherwise a duplicate of this order will be filed with the Clerk of the nearest Magistrate's Court, in accordance with the 14th section of the Defence Amendment Act, 1910, and such further and other remedies will be taken as may be necessary to enforce payment by you, the said , of the said fine.

Given under my hand at , this day of , 191 .

.....(2)

Officer in Command of Unit [*or* Corps].

(1) Here state nature of breach, following words of Regulation as nearly as possible.

(2) State rank.

[N.Z.M.F.

DECLARATION AS TO SERVICE OF ORDER FOR PAYMENT OF FINE UNDER THE DEFENCE ACT, 1909, AND ITS AMENDMENTS.

I, , of , do solemnly and sincerely declare that I served the within-named, No. , [*Rank*] and [*name in full*] with the original order, a true copy of which appears on the other side hereof, and is marked "A," by delivering the same to him personally(1) *or by posting the same to him at his last known place of abode at* , on day, the day of , 191 .

(1) If order was not served personally strike out the words "by delivering the same to him personally."

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Justices of the Peace Act, 1908.

Declared at this day of , 191 , before me, , a Justice of the Peace for the Dominion of New Zealand [*or* Solicitor *or* Notary Public].

To the Clerk of the Magistrate's Court, .

No. , [*Rank, Name in full, and Corps*] having failed to pay the fine of as ordered by , I (2) , now transmit to you this duplicate of the order for payment of such fine to file such order in terms of the Defence Amendment Act, 1910, section 14.

(2) Name and rank.

, Officer Commanding Unit [*or* Corps].

N.Z.M.F.

Army Form C. 396.

FORM L. FORM OF ORDER FOR TEMPORARY DETENTION IN PRISON OR LOCK-UP.

(This form can be used only in the case of a soldier as defined by the Army Act.)

To the Gaoler or Chief Officer of Prison at (1)

WHEREAS , of the Regiment, is now a prisoner in military custody. Now, therefore, I, the undersigned, the Commanding Officer of the said prisoner, do hereby, in pursuance of the Defence Act, and of all other Acts and powers enabling me in this behalf, order you to receive the said prisoner into your custody and detain him until you receive a further order from me, but not longer than seven days, and for so doing this shall be your warrant.

(1) Substitute, if necessary, "Officer in charge of the police-station [*or other place*] at ."

Signed this day of , 191 .

[*Signature.*]

N.Z.M.F. 116.
Army Form B. 116.

..... Regiment. Station : . Date : ,
191 .

APPLICATION FOR A COURT-MARTIAL.

SIR,—

I have the honour to submit charge against No. , , of the , under my command, and request you will obtain the sanction of that a Court-martial may be assembled for his trial at .

The case was investigated by .

The accused is now at . His general character is* .

I beg to enclose the following documents :—

(1.) † charge-sheet (in duplicate).
(2.) ‡ Summary of evidence.
(3.) § The accused's [troop, squadron, battery, *or* company] conduct-sheet.
(4.) § List of witnesses for the prosecution and defence (with their present stations).
(5.) § Statement as to character, and particulars of service of accused (N.Z. Form B. 296), to be proved by .

I have the honour to be,
Sir,
Your most obedient humble servant,
[*Signature of Commanding Officer.*]

To .

* To be filled in by the Commanding Officer.

† One copy to be sent to the President; one copy to be filed with the application for trial. In cases of desertion a statement as to whether the accused was apprehended or surrendered is to be included.

‡ To be sent to the President.

§ (3), (4), (5) to be returned to the Officer Commanding Unit of the accused with the notice of trial.

Medical Officer's Certificate.

I CERTIFY that No. , Regiment, is in a state of health, and to undergo imprisonment, and with or without hard labour, and that his present appearance and previous medical history both justify the belief that hard-labour employment will neither be likely to originate nor to reproduce disease of any description.

[*Signature of Medical Officer.*]

N.Z.M.F.
Army Form B. 121.

N.Z. MILITARY FORCES.

SQUADRON, TROOP, BATTERY, AND COMPANY DEFAULTER BOOK.

Regiment of . Signature of O.C. Company . Number of Sheet .

Regimental Number and Name. No.	Age. Yrs.	Age. Mths.	Height. Ft.	Height. In.	Where Born. Parish.	Where Born. County.	Where Enlisted. Place.	Where Enlisted. Date.	Marks. Complexion.	Marks. Hair.	Marks. Eyes.	Marks. Trade.	Marks. Religion.	Period of Enlistment. Joined Date	Period of Enlistment. Joined Date	Period of Enlistment. Joined Date	Period of Enlistment. Joined Date	Offence.	By whom reported, and Names of Witnesses.	Punishment awarded.	Date of Award or of Order dispensing with Trial.	By whom.	Date of Commencement.	Date of Expiration.	Remarks.	Promotion.	Good Conduct Pay.	Former Service.

N.Z.M.F. 296.
Army Form B. 296.

STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF PRISONER.

..... of the .....

NOTE.—The squadron, troop, battery, or company defaulter sheet is to be produced in Court with this statement, but is not to be annexed to the proceedings.

1. THE following is a fair and true summary of the entries of the prisoner's name in the squadron, troop, battery, or company defaulter sheet, exclusive of convictions by a Court-martial or a Civil Court:—

	*Within last 12 months.	* Since Enlistment.
For	times	times.
For	times	times.
For	times	times.
For	times	times.

[*Or*]

The prisoner's name does not appear in the defaulter book.

2. The prisoner has not been previously convicted.

[*Or*]

The previous convictions of the prisoner by a Court-martial or a Civil Court are set out in the schedule annexed to this statement.

* The numbers herein stated should correspond with the number of *Entries* in the defaulters' sheet, prominence being given to the most serious offence in each entry.

3. The prisoner is not under sentence at the present time.

[*Or*]

The prisoner at the present time is under sentence for beginning on the day of .

NOTE.—If the charge is for drunkenness the entries for drunkenness must be stated separately.

4. The prisoner has been in confinement, awaiting trial on the present charges, for days in civil custody and days in military custody, total days, of which days were spent in hospital.

5. The prisoner's present age, according to his attestation paper, is .

6. The date of his attestation specified in his attestation paper is .

7. The service which the prisoner is allowed to reckon towards discharge or transfer to the reserve is .

8. The prisoner is in possession of, or entitled to, no military decoration or military reward which the Court can forfeit [*or* is in possession of *or* entitled to].

9. The prisoner has served as a non-commissioned officer continuously, without reduction, to the present date, in the rank of , years; in the rank of , years; in the rank of , years.

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

The above statement [with the schedule of convictions] is read, marked , signed by the President, and annexed to the proceedings.

Schedule of Convictions by a Court-martial or Civil Court of Prisoner.

Regimental Number, Rank and Name of the .

(NOTE.—*A verbatim extract from the regimental books, stating these convictions, must be inserted.*)

Description of Court by which tried.	Date and Place of Trial.	Charges upon which convicted.	Sentence of the Court.	Punishment remitted.

I hereby certify that the foregoing schedule of convictions is a true extract from the regimental books in my custody.

Signed this day of .

.....

N.Z.M.F.
A.F.

(No. 1.)

FORM FOR GENERAL COURTS-MARTIAL.

Form of Order for the Assembly of a General Court-martial.

Orders by , commanding the .

[*Place and date.*]

THE detail of officers as mentioned below will assemble at on the day of , for the purpose of trying by a General Court-martial the accused person [persons] named in the margin [and such other person (*or* persons) as may be brought before them].*

NOTE.—The President must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

PRESIDENT.

is appointed President.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [*or, where the convening officer has the appointment of a Judge-Advocate,* is hereby] appointed Judge-Advocate.

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

The proceedings will be forwarded to .

Signed this day of , 191 .

By order.

* Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure 20 and 21) should be added here thus: "In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available" [*or as the case may be*].

† Add here, if the President is under the rank of Field Officer, and the officer convening the Court is not under that rank, "In the opinion of the convening officer a Field Officer is not, having due regard to the public service, available." In the case of a District Court-martial, if the President is under the rank of Captain, add, "In the opinion of the convening officer a Captain is not, having due regard to the public service, available."

List of Witnesses, Trial of .

N.Z.M.F.A. 47(A).
A.F. .

(No. 1.)

COURTS-MARTIAL.

Form of Order for the Assembly of a District Court-martial.

Orders by , commanding the .

[*Place and date.*]

THE detail of officers as mentioned below will assemble at on the day of , for the purpose of trying by District Court-martial the accused named in the margin [and such other person or persons as may be brought before them].*

NOTE.—The President must be named. The members and the waiting members may be mentioned by name, or the number and ranks and the mode of appointment may alone be named.

PRESIDENT.

is appointed President.†

MEMBERS.

WAITING MEMBERS.

JUDGE-ADVOCATE.

has been [*or, where the convening officer has the appointment of a Judge-Advocate,* is hereby] appointed Judge-Advocate.

Accused will be warned, and all witnesses duly required to attend.

The proceedings will be forwarded to .

Signed this day of , 191 .

By order.

* Any opinion of the convening officer with respect to the composition of the Court (see Rules of Procedure, 20 and 21) should be added here thus: "In the opinion of the convening officer, officers of different corps are not, having due regard to the public service, available" [*or as the case may be*].

† *If the President is under the rank of field officer and the convening officer is not under that rank, after the words* "appointed President" *add* "in the opinion of the convening officer, is not, having due regard to the public service, available," *and if the President is under the rank of captain add,* "in the opinion of the convening officer, a Captain is not, having due regard to the public service, available." *If a Judge-Advocate is appointed, his appointment will be notified or made in the same manner as in the Form of Order for the Assembly of a General Court-martial.*

List of Witnesses, Trial of .

N.Z.M.F. 286.
Army Form B. 286.

(No. 3.)

COURTS-MARTIAL.

Form of Order for the Assembly of a Regimental Court-martial.

Orders by , commanding .

[*Place and date.*]

THE officers mentioned below will assemble at on for the purpose of trying by Regimental Court-martial the prisoner [prisoners] named in the margin [and such other prisoner or prisoners as may be brought before them].

PRESIDENT.

is appointed President.

MEMBERS.

Prisoners will be warned, and all witnesses duly required to attend.

The proceedings will be forwarded to .

Signed this day of .

By order.

* If the President is under the rank of Captain, after the words "appointed president," add "the Court-martial being held on the line of march," *or* "the Court-martial being held on board the , a ship [not] commissioned by His Majesty," *or* "in the opinion of the convening officer a captain is not, having due regard to the public service, available."

List of Witnesses, Trial of .

BY AUTHORITY: JOHN MACKAY, GOVERNMENT PRINTER.

[4,000/9/11—18156