

Geo. W. Hudson

NOTES ON MILITARY LAW AND DISCIPLINE

For Canadian Soldiers

By

Brooke Claxton

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By

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REFERENCES

<i>A.A.</i>	Army Act, 44-45 Vict., c. 58 (1879) of the Parliament of the U.K. as amended to date. References are to sections.
<i>A.S.</i>	Active service.
<i>C.A.S.F.</i>	Canadian Active Service Force
<i>Company</i>	covers squadron, troop, battery as well as company.
<i>Crankshaw</i>	Crankshaw's Criminal Code of Canada, 6th Ed. 1935.
<i>Cr. C.</i>	The Criminal Code, Revised Statutes of Canada, 1927, c. 36. The references are to sections.
<i>D.C.M.</i>	District Court-Martial.
<i>D.O.C.</i>	District Officer Commanding a military district in Canada.
<i>D. of C. Reg.</i>	Defence of Canada Regulations, 1939. References are to the numbers of the various regulations.
<i>F.G.C.M.</i>	Field general court-martial.
<i>Fin. Reg. C.A.S.F.</i>	Financial Regulations and Instructions for the Canadian Active Service Force, 1939.
<i>G.C.M.</i>	General court-martial.
<i>K.R. (Army)</i>	The King's Regulations for the Army and the Army Reserve.
<i>K.R. (Can.) or K.</i>	The King's Regulations and Orders for the Canadian Militia, effective 1st April 1939. The references are to paragraph numbers. This work should always be cited "K.R. (Can.)", the abbreviation "K". being used in the marginal notes solely for reasons of space.
<i>M.A.</i>	The Militia Act, R.S.C. 1927, c. 132. References are to sections.
<i>Magistrate</i>	includes any sheriff, mayor or other head officer, justice or other peace officer of any county, city, town or district.
<i>M.M.L.</i>	Manual of Military Law, 1929. The references are to pages, the more usual method of citation by chapter and paragraph number, thus "M.M.L. Ch. I, para. 1" not being used for reasons of space.
<i>N.P.A.M.</i>	Non-Permanent Active Militia.
<i>O.C.</i>	Order or proclamation of the Governor General in Council.
<i>P. & A. Reg.</i>	Pay and Allowance Regulations for the Permanent and Non-Permanent Active Militia, 1937.
<i>P.F.</i>	Permanent Force, meaning such permanently embodied units in the Active Militia as are enrolled for continuous service.
<i>R.P.</i>	Rules of Procedure.

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These notes were prepared in the first instance for lectures to the McGill Contingent, C.O.T.C., but the absence of similar material and the possibility that copies of the Manual of Military Law and King's Regulations and Orders for the Canadian Militia might not always be available have indicated that the Notes might be useful in a wider field. Of necessity they were produced in haste and the writer would be obliged if suggestions and corrections were called to his attention. In Part VIII will be found some notes on discipline. Most of this is orthodox enough, but what is not must be blamed on experience as officer, gunner and battery sergeant-major in two units that almost certainly were not representative of the other units in the Canadian forces.

The Notes go rather beyond the syllabus set out in "How to Qualify" as required on promotion from Second Lieutenant to Lieutenant, which is:

Period	Detail	Reference
27	Nature and purpose of military law, legal position of officers and soldiers; martial and military law; contents generally of Manual of Military Law (including Army Act and Rules of Procedure) and of K.R. (Can.), including Militia Act.	M.M.L. Chap. I. Militia Act, s. 69
28	The Militia Act, including Arms, Clothing and Equipment; Calling out the Militia and Active Service.	Militia Act, ss. 42-46, 63-74
29	The Militia Act, including Desertion and Absence without Leave; Aid of the Civil Power; Offences and Penalties.	Militia Act, ss. 65, 71-72, 75-78, 82, 106-108, 112, 115-121, 125-129, 137.
30	Discipline, including General Instructions; Arrest and Military Custody; Investigation of Charges; and Discipline at Schools of Instruction.	K.R. (Can.) paras. 407-09, 413-415, 417-421, 423, 440-441, 445-454, 475, 1110.

Thanks must be expressed to the Officer Commanding the McGill Contingent C.O.T.C., for permission to make the Notes available, and to my senior partner, Lieut.-Col. G. S. Stairs, M.C., V.D., for the use of similar notes prepared by him in 1914, as well as to the Commandant, R.M.C., Col. R. J. Orde, Judge Advocate-General, Lieut.-Col. F. C. Hanington, M.C., G.S.O.I. of M.D. No. 4, Major J. M. Morris, M.C., V.D., Major C. R. Young of the University of Toronto C.O.T.C., G. Miller Hyde and John H. McDonald, for valuable assistance.

Montreal, 6th November, 1939.

B.C.

PART I.

What is Military Law and where is it found

1. Object and scope

Military law is the law which governs the members of the army and regulates the conduct of officers and soldiers as such, in peace and war, at home and abroad. Its object is to maintain discipline as well as to deal with matters of administration in the army. As distinguished from the ordinary civil law, it is administered by military courts and is chiefly concerned with the trial and punishment of offences committed against its enactments; but on becoming subject to military law the soldier does not cease to be subject to the ordinary criminal and civil law (Halsbury, 2nd Ed. 1938, Vol. 28, n. 1217).

M.M.L. 1; A.A. 41A

2. Distinguished from martial law

Military law is to be distinguished from martial law which is the condition obtaining when the application of the ordinary rules of law by the ordinary courts is suspended and such law as then remains is enforced by military tribunals. Anything in the nature of martial law could only be lawfully proclaimed and enforced in Canada under the authority of an act of parliament. Conceivably, the War Measures Act (R.S.C. 1927, c. 206) might give such authority. Military aid to the civil authority in order to suppress riots is quite a different matter from martial law and is dealt with under the Militia Act and the Criminal Code and will be referred to in Part VI of these Notes.

M.M.L. 4

3. Military law includes

Cr. C. 2 (21)

The Criminal Code states military law includes:

"the Militia Act and any orders, rules and regulations made thereunder, the King's Regulations and Orders for the Army, any Act of the United Kingdom or other law applying to His Majesty's troops in Canada, and all other orders, rules and regulations of whatsoever nature or kind to which His Majesty's troops in Canada are subject."

4. Authority for military law

It is of the very essence of British and Canadian political institutions that all authority for governmental action must be found in an act of parliament. This is true in a special sense of the Army Act which under various names has depended for its authority upon an annual act of parliament since the first Mutiny Act of William and Mary in 1689. In Canada, "Militia, Military and Naval Service and Defence" is placed under the legislative authority of the Dominion parliament by the British North America Act; and the statute from which all military authority is derived is the Militia Act, enacted by the Dominion parliament. In this country parliament exercises control by providing that it must be summoned within 15 days of the Militia being placed on active service. This is laid down in the Militia Act and in that act it is to be found authority for everything normally regarded as military law in Canada. But extraordinary measures not covered by this act may be adopted by the cabinet, or government, "the Governor in Council" as it is called, under powers conferred by the War Measures Act to

"do and authorize such acts and things, and make from time to time such orders and regulations, as he may by reason of the existence of real or apprehended war, invasion or insurrection deem necessary or advisable for the security, defence, peace, order and welfare of Canada."

s. 3

Under this act the government by O.I.C. on 1st September 1939 proclaimed a state of apprehended war to have existed from 25th August, and on 10th September proclaimed that a state of war existed with the German Reich as from that date.

The Militia Act is derived from a statute enacted in 1868 and since carried forward in the revisions of the statutes and amended from time to time. It will be found as Appendix I to K.R. (Can.). The act provides for the establishment and control of the Active Militia, Permanent and Non-Permanent, and it gives the Governor in Council power to

"make regulations for carrying this Act into effect, for the organization, discipline, efficiency and good government generally of the Militia, and for anything requiring to be done in connection with the military defence of Canada."

5. Powers conferred by Militia Act
p. 282

M.A. 139

This provision is the authority for K.R. (Can.), P. & A. Reg. and most of the orders issued to regulate the military forces of Canada as a whole. The military command and the chain of authority and responsibility are derived in part from the Militia Act and in part from the regulations adopted under its provisions. Actually, the Command-in-Chief is vested in the King and is exercised by His Majesty or by the Governor General as his representative (B.N.A. Act, s. 15) but it is now recognized that the authority is actually exercised by the responsible minister (Sir Robert Borden, Memoirs, p. 461), here the Minister of National Defence, who in addition to his other powers may exercise those given to the Army Council under the Army Act (K.R. (Can.) page 325). District Officers Commanding are responsible to the Minister and a Commanding Officer is responsible to the King (through the Minister) "for the maintenance of discipline, efficiency and proper system in the unit under his command. He is also responsible for its training and readiness for war."

M.A. 28-33
K 6

M.A. 4

K 8, 19

K. 30

K. 34

In these Notes references will be made frequently to the Militia Act in various circumstances, but here it is convenient to note briefly several provisions of an administrative character. Thus, general orders are sufficiently notified to all persons whom they concern by their insertion in the Canada Gazette and other orders are sufficiently notified to all persons by insertion in some newspaper or, if there is no such newspaper, then by posting. It is not necessary that any order or notice be in writing unless required to be so, if it is communicated to the person concerned.

M.A. 137

M.A. 138

The Minister is given control of military buildings and forts, and military property is vested in the Crown. The value of articles of public property which have become deficient or damaged otherwise than through fair wear and tear or unavoidable accident may be recovered by the Minister from the officer in command of a corps, who may, in turn, recover such value from the officer or man responsible for the loss or damage. Men serving in the Militia about to leave Canada (except on duty) are required to return articles in their possession. It is expressly provided that no corps and no non-commissioned officer or man shall appear in uniform or armed or accoutred, except when on duty, on parade, at target practice, or by permission of the C.O. No gift, sale or other alienation of any money or of any arms, ammunition, clothing, equipment, musical instruments or other things belonging to or used by any corps shall be effectual without the consent of His Majesty.

M.A. 6
M.A. 129

M.A. 44

M.A. 45

M.A. 46

M.A. 142

The Militia Act has the very important provision that:

"The Army Act for the time being in force in Great Britain, the King's regulations and all other laws applicable to His Majesty's troops in Canada and not inconsistent with this Act, or the regulations made hereunder, shall have force and effect as if they had been enacted by the Parliament of Canada for the government of the militia."

6. Laws additional to the Militia Act forming part of military law
M.A. 69 (1)

The Army Act will be found in the last edition of the Manual of Military Law issued in 1929, since substantially amended. Part I of the M.M.L. is virtually a textbook on military law supported by references to the statutes, rules and cases bearing on the subject. In addition to dealing with military law proper, there is a history of the subject and also a history of the military forces of the Crown. Other chapters deal with the relation of officers and soldiers to civil life, the employment of troops in aid of the civil power and the laws and usages of war on land. All Part I may be said to be relevant to Canada, but it does not have the effect of law. It is explanatory, not mandatory.

Part II contains the text of the Army Act and Rules of Procedure with annotations. This part also applies to Canada, except insofar as it is not consistent with the Militia Act or the regulations made thereunder.

Part III of the Manual of Military Law has a number of miscellaneous enactments and regulations which do not apply to Canadian soldiers, at least in Canada.

M.A. 69 (1)

8. *The Army Act*

A.A. 2

A.A. 42-68

A.A. 69-75

A.A. 171;
R.P. 122 (b);
129, 131

9. *Rules of Procedure*

A.A. 70
M.M.L. 496

The Army Act was enacted in 1879 but it since has been substantially amended. As noted above, the Act is only valid if continued in force by an annual act of the Parliament at Westminster. Sections 4 to 41 deal with discipline and in particular specify a number of offences. Other provisions of the Act deal with complaints by officers and men, punishment, arrest, trial and execution of sentence, articles of war, rules of procedure and orders for the command of the forces, enquiry into desertion, the appointment of provost-marshal, and stolen property. This is Part I of the Act and with sections 122 and following relating to courts-martial, etc., covers the most important ground for Canadian soldiers. It should be noted that the "custom of the service" is expressly recognized by the Army Act and the Rules of Procedure for certain purposes.

The Rules of Procedure brought into force under the provisions of the Army Act apply also in Canada except insofar as they may be expressly derogated from by the Canadian provisions. The Rules of Procedure in force to-day were drawn up in 1926 and are to be found at pages 611 and following of the Manual of Military Law. They deal particularly with the procedure to be followed in connection with the arrest and trial of a soldier under the provisions of the Army Act.

The First Appendix to the Rules of Procedure contains forms of charges, first dealing with the commencement of the charge sheet, and then describing the offences. These are classified under the appropriate section of the Army Act and will be found quite adequate for the preparation of a charge sheet for any offence that may occur in the ordinary course of service.

The Second Appendix to the Rules of Procedure contains a set of the forms to be used at courts-martial. Generally speaking, all these forms are useful in Canada and most of them are printed as Militia Forms for use by the Canadian forces. These forms are followed by Memoranda for the Guidance of Officers Concerned with Courts-Martial.

The Third Appendix has Forms of Commitment to prison of military convicts, Rules for Field Punishment, Forms of Court-

M.M.L. 699
M.M.L. 702
M.M.L. 704

M.M.L. 736

M.M.L. 763

M.M.L. 771
M.M.L. 788

Martial Warrants and Instructions regarding the Suspension and Review of Sentences Awarded by Courts-Martial.

M.M.L. 705

10. *K.R. (Can.)*

Reference has already been made to The King's Regulations and Orders for the Canadian Militia. This with the Militia Act, which is its authority, and the Army Act and Rules of Procedure, comprises the body of military law that must be considered by the Canadian soldier for all practical purposes. Successive Sections of K.R. (Can.) deal with Organization, Duties of Commanders, The Staff, Special Appointments, Services and Branches, Officers' Appointments, Soldiers' Enlistment, etc., Discipline, Training and Education, General Duties, Movement of Troops, etc., Dress, etc., Ceremonial, Office Work. Paragraphs 405 to 650 and 848 to 867 are particularly relevant to the study of military law. The King's Regulations for the Army and the Army Reserve, 1935, (K.R. (Army)) forms part of the military law applicable in Canada insofar as it is not inconsistent with the Militia Act and the regulations made thereunder, but K.R. (Can.) is largely based on K.R. (Army) and for any ordinary purpose renders reference to K.R. (Army) unnecessary.

Under the British and Canadian political systems there must be a statutory authority for every governmental action, and the law must be enforced in a legal manner and upon legal authority. This is the "rule of law" and it applies in the military forces as elsewhere. Military law is the term specially applied to the body of laws and regulations having legal effect which apply to the soldier as such.

PART II.

Who is subject to Military Law and what that means

The Active Militia, to which the Militia Act applies, consists of such corps as are from time to time named by the Governor in Council. A person to-day may only join the Active Militia voluntarily. Upon engaging to serve he is required to take the oath of allegiance in the following terms:

"I, A B, do sincerely promise and swear that I will be faithful and bear true allegiance to His Majesty."

This oath is declared to have the effect of a written engagement with the King, binding upon the person subscribing it to serve in the Militia until he is legally discharged, dismissed or removed, or until his resignation is accepted. Service is normally for three years and this is expressly stated in the form of attestation. In the form of attestation for the P.F. the period of engagement is filled in.

Section 69 of the Militia Act states who are subject to military law. It reads:

"2. Every officer and man of the Militia shall be subject to such Acts, regulations and laws

- (a) from the time of being called out for active service;
- (b) during the period of annual drill or training under the provisions of this Act;
- (c) at any time while upon military duty or in the uniform of his corps or within any rifle range or any armoury or other place where arms, guns, ammunition or other military stores are kept, or within any drill shed or other building or place used for militia purposes;

12. *Voluntary enlistment*

M.A. 20

M.A. 21

M.A. 15

M.F.B. 235d

M.F.B. 235

13. *Who is subject to military law*

M.A. 69 (2)

- (d) during any drill or parade of his corps at which he is present in the ranks;
 - (e) when going to or from the place of drill or parade;
 - (f) at any drill or parade of his corps at which he is present as a spectator whether in uniform or not.
- "3. Officers and men of the Permanent Force and members of the permanent staff of the Militia shall at all times be subject to military law."

M.A. 69 (3)

In addition, all persons who are employed by or are in the service of any of His Majesty's troops when employed on active service, and all persons who are followers of or accompany His Majesty's troops when on active service, are subject to military law as soldiers.

A.A. 176 (9)

A.A. 176 (10)

14. Calling out on active service

M.A. 63

The Militia Act provides that:

"The Militia or any part thereof, or any officer or man thereof, may be called out for any military purpose other than drill or training, at such times and in such manner as is prescribed."

This was implemented by O.I.C. made on 26th August 1939:

"The Minister of National Defence may call out the Militia or any part thereof, or any officer or man thereof, for any purpose coming within the provisions of section 63 of the Militia Act, at such times and in such manner as he may deem expedient."

By G.O. 124 the Minister called out on service the units therein mentioned of the N.P.A.M., effective 26th August, 1939 (Canada Gazette, 9th September, 1939, p. 722; see also House of Commons Debates (unrevised) 11th September, 1939, p. 135).

Section 64 goes further than section 63. It reads:

"The Governor in Council may place the Militia, or any part thereof, on active service anywhere in Canada, also beyond Canada, for the defence thereof, at any time when it appears advisable so to do by reason of emergency."

Under G.O. 170 the parts of the Militia previously called out under section 63 of the Militia Act were declared to be placed on active service in Canada under section 64 (Canada Gazette, 14th October, 1939, p. 1213).

15. Enrolment

M.A. 8

M.A. 24 and 25

M.A. 64

"All the male inhabitants of Canada, of the age of 18 years and upwards, and under 60, not exempt or disqualified by law, and being British subjects, shall be liable to service in the Militia." These may be drafted for the Militia by ballot and having been enrolled may be placed on active service. The Military Service Act (7-8 Geo. V, c. 19), under which conscription was imposed in the last war, is "spent" (R.S.C. 1937, Vol. V, p. 27; 14-15 Geo. V, c. 65, s. 5 (2); R.S.C. 1927, Vol. IV, p. 4292; House of Commons Debates, 22nd February 1937, p. 1082; 1938, pp. 1382, 1664).

16. Service in the field

Under section 68 of the Militia Act the term of service for a member of the N.P.A.M. voluntarily enlisted or drafted would be one year in the field (plus possibly six months), unless the man volunteers to serve for a longer period, which would be established in his form of attestation.

17. Canadian Active Service Force

P.C. 2482

By O.I.C. dated 1st September, 1939, the Governor in Council authorized the organization of the C.A.S.F. and for that purpose named as corps of the Active Militia under section 20 of the Militia Act the units, formations and detachments set out in Schedule "D" listing the units in the C.A.S.F. By the same O.I.C. and under and by virtue of the power conferred by section 64 of the Militia

Act, the Governor in Council placed on active service in Canada the same units, etc., and in addition those corps and parts of the Militia as set out in Schedule "E" listing the Headquarters and District Staffs and the P.F. (G.O. 135, Canada Gazette, 16th September, 1939, p. 783). G.O. 139 (Canada Gazette, 16th September, 1939, p. 788) authorized the Adjutant-General to call out on service "for purposes pertaining to the organization of the C.A.S.F.," such officers and other ranks in the respective military districts as he may select or detail, and by an order the Adjutant-General detailed for active service all the officers of the staff and P.F. (Canada Gazette, 4th November, 1939, p. 1445). G.O. 140 placed the regimental depots there listed on active service under section 64 (Canada Gazette, 16th September, 1939, p. 788).

Members of the C.A.S.F., while serving therein, are consequently part of the Active Militia, as the units of the C.A.S.F. have each been named as a corps of the Active Militia under section 20 of the Militia Act, and all of these C.A.S.F. units have been placed on active service by the Governor in Council under section 64 of the Act. The C.A.S.F. units are therefore to be considered as corps in the Active Militia placed on active service, and their members are subject to military law at all times.

As the C.A.S.F. is a force raised for a particular purpose, its members are attested for service therein on a special form drafted to meet the circumstances demanding the creation of such a force. The form of attestation for the C.A.S.F. reads:

"I, do solemnly declare that the above particulars are true, and I hereby engage to serve in the Canadian Active Service Force so long as an emergency, i.e., war, invasion, riot or insurrection, real or apprehended, exists, and for the period of demobilization after said emergency ceases to exist, and in any event for a period of not less than one year, provided His Majesty should so long require my services.
Date..... (Signature of recruit)"

M.F.M. 2

Members of the N.P.A.M. who wish to volunteer for the C.A.S.F. do so on a special form to the same effect.

M.F.M. 2x

This position may be contrasted with that of the Canadian Expeditionary Force in 1914. As doubt existed as to the power to put the C.E.F. under the Militia Act, steps were taken to put Canadian soldiers in the position of British regulars and thus make them subject to the Army Act directly and not through the Militia Act. This position was only straightened out in September 1916 (History of the Canadian Forces, pp. 25, 30, 55).

Financial Regulations and Instructions for the Canadian Active Service Force (Canada) have been issued under that name (cited "Financial Regulations") respecting the pay and allowances of the C.A.S.F. and members of the Active Militia placed on active service under section 64 or called out by the Minister under section 63 of the Militia Act.

Each contingent of the C.O.T.C. is in law a corps of the N.P.A.M. having been named as such by O.I.C. under section 20 of the Militia Act, and its members are subject to military law in the same way as are other members of the N.P.A.M., that is, while on military duty or attending any drill or parade of his corps or when going to or from the place of drill or parade. The C.O.T.C. is regulated by Instructions adopted in 1936. The engagement is for one year. As

18. Position of the C.O.T.C.

M.A. 69 (2)

members of the C.O.T.C. are members of corps in the Active Militia they are legally liable to be called out or placed upon active service, but the instructions for the C.O.T.C. direct that "save in case of grave emergency, units or cadets of the C.O.T.C. will not be called out for duty in aid of the civil power" (para. 35).

At the outset we observed that the soldier remains subject to ordinary criminal and civil law, but the fact that he is subject to criminal law does not prevent his being subject to military law. In addition to being liable to trial by military tribunals for offences under military law, he is liable to trial by the ordinary civil courts for offences under criminal law and, subject to exceptions noted below in Part VII, he is answerable at civil law in the same way as any civilian.

PART III.

Offences

20. Military and criminal offences

Section 41 of the Army Act gives absolute jurisdiction to a military tribunal to try any person subject to military law for an offence under criminal law punishable by the law of England, but not for treason, murder, manslaughter or rape committed within the U.K., or committed within His Majesty's dominions unless such person was on active service or more than one hundred miles from a competent civil court. However, a person subject to military law may be tried in any civil court for any offence for which he would be tried if he were not subject to military law, but a civil court trying a person for the same offence shall take into account the military punishment he may already have undergone. A person convicted or acquitted by a civil court or a court-martial cannot be tried again by court-martial for the same offence.

Some offences under criminal law are far more serious under military law. Thus striking a superior officer is an assault at criminal law, punishable ordinarily by binding over or a fine or a few days' imprisonment. But at military law the offence may be punished by penal servitude. Offences of this character, which are very much more important from the military point of view, would normally be tried in a military tribunal. Other acts constitute offences under military law which, under civil law, would not be offences at all. An example of this is absence without leave, which may become desertion on active service punishable also by penal servitude under military law, but which would give rise to no penalty whatever under the ordinary law except a possible action for breach of contract.

21. Offences under the Army Act

Offences of a military character are set out in detail in sections 4 to 40 of the Army Act and these are fully annotated in the M.M.L. Here reference will only be made to the offences which more frequently occur. Unless otherwise noted the maximum punishment in the case of a soldier is imprisonment and in the case of an officer is cashiering. For every offence any less punishment may be given than that specified except in the case of an officer convicted of scandalous conduct, who must be cashiered, and an accused convicted of murder, who must suffer death. Many offences are more serious when on active service. This is defined "as forming part of a force which is engaged in operations against the enemy." To be on "active

service" as used in M.A. ss. 64 and 69 does not require engagement in operations against the enemy. The offences marked "c" may be dealt with by a C.O. except on active service, while offences marked "C" may be dealt with by a C.O. even on active service. The offences not marked can only be dealt with by court-martial unless a superior authority has specifically authorized the C.O. to dispose of such an offence. The manner of dealing with offences is summarised in Part IV of these Notes.

Section	Offence
6 (2) (b)	c Forces a safeguard (penal servitude on A.S.)
6 (2) (c)	c Forces or strikes a sentinel (penal s. on A.S.)
6 (2) (h)	c Without orders leaves a guard, etc. (penal s. on A.S.)
6 (3) (c)	c Impedes or refuses to assist the provost-marshal, etc.
6 (3) (d)	c Commits any offence to the person or property of any inhabitant in the country in which he is serving.
6 (3) (e)	c Irregularly detains or appropriates to his corps supplies contrary to orders.
6	Mutiny or sedition (death).
8 (1)	Strikes or offers any violence to his superior officer in the execution of his office (penal servitude).
8 (2)	c Strikes or offers any violence or uses any insulting or insubordinate language to his superior officer (penal servitude on A.S.). Superior officer includes N.C.O. and even a senior in the same grade, but never another private. The C.O. may not deal with the offence of striking.
9 (1)	Wilfully disobeys an order (penal servitude).
9 (2)	c Disobeys any lawful command (penal servitude on A.S.)
10 (1)	An officer concerned in any quarrel refusing to obey any officer who orders him into arrest.
(2)	C Strikes, etc., any person in whose custody he is placed.
11	Neglects to obey any general or garrison or other orders (This would include garrison or regimental standing orders but not K.R.).
12 (1)	Desertion (penal servitude on A.S.)
14	C Assists desertion or fails to notify C.O. of intended desertion.
15 (1)	C Absents himself without leave.
(2)	C Fails to appear at place of parade, etc.
(3)	C Is found beyond any limits fixed.
(4)	C Is absent from any school he is ordered to attend (K. 495 and following lays down rules for dealing with A.W.L. cases).
16	"Every officer who, being subject to military law, commits the following offence, that is to say, behaves in a scandalous manner, unbecoming the character of an officer and a gentleman, shall, on conviction by court-martial, be cashiered." This is the only punishment for an offence brought under this section.
17	Steals property he is charged with (penal servitude).
18 (1)	C Malingers.
(3)	C Wilfully aggravates disease.
(4)	Steals or receives knowingly any property belonging to the Crown or a mess or any person subject to military law.
(5)	Is guilty of any offence of fraudulent nature not specified or other disgraceful conduct of a cruel, indecent or unnatural kind.
19	C Drunkenness on or off duty (a fine not exceeding \$16. K. 486 and following lays down rules for dealing with drunkenness).
20	C Without authority releases or without reasonable excuse allows the escape of a person committed to his charge (penal servitude if offence was wilful but then the C.O. cannot deal with it).
21 (1)	C Fails to bring an arrested person to trial.
(2)	C Fails to make a charge within 24 hours of arrest.

A.A. 190 (7);
M.M.L. 433 and
605

M.M.L. 442

- (3) C Being in command of a jail fails to report an arrest.
 22 C Escaping or attempting to escape from arrest.
 24 C Makes away with or loses by neglect or wilfully injures any military property.
 25 Makes a false report, return or roll.
 26 (1) Leaves in blank any material part of any document relating to pay, arms, clothing, etc.
 27 (4) C Makes a wilfully false statement in respect to the prolongation of furlough.
 33 c Makes a wilfully false answer in attestation paper.
 36 Without due authority discloses the numbers or position of any forces or stores, etc.
 37 Officer or N.C.O. strikes or ill-treats a soldier.
 40 C "Is guilty of any act, conduct, disorder or neglect to the prejudice of good order and military discipline." (Offences for which special provision is made should not be made under this section. For illustration of charges see M.M.L. 459. An attempt may be charged under this section).

22. *Offences under the Militia Act*
 M.A. 125
 Note 67 below
 M.A. 93

23. *Breach of K.R. (Can.)*

M.M.L. 436

A number of offences are created under the Militia Act but as jurisdiction to deal with these is given to the civil courts, it has been found preferable to refer to these under Part VII of these Notes. It should however be observed that the Militia Act expressly provides that an officer or man and "any person punishable under this Act" may be tried by court-martial. But the practice in peace time is usually to deal with offences by members of the N.P.A.M. in the civil courts under the Militia Act and to deal with offences by members of the P.F. by military tribunals under the Army Act.

Generally speaking, K.R., (Can.) has regulations for the general guidance of the forces without any penalty being specified for their breach, and infractions of K.R. (Can.) are not usually dealt with as offences unless the paragraphs, the provisions of which have been infringed, have been published in unit orders, in which event a charge would be laid under section 11. If it was considered desirable to base a charge on an infraction of K.R. (Can.) not published in unit orders it would be laid under section 40 of the Army Act.

PART IV.

Arrest, Trial and Sentence

24. *How are offences dealt with-*

A.A. 45; K. 445
 (a)

K. 446 (d) as amended by G.O. 171

M.F.B. 224, 264,
 M.F.B. 237; K. 456

Under the Army Act, a person charged with an offence may be placed in military custody, that is under arrest, but the great majority of military offences can be dealt with without putting the man under arrest. Many of these arise during the course of an inspection, parade or guard. The inspecting officer, finding that a man is unshaven, tells an N.C.O. "Take that man's name." The N.C.O. does this and the orderly sergeant or other N.C.O. informs the offender of the charge and orders him to attend at company orderly room at a specified time, usually the next morning. The accused and the N.C.O. who made the charge are then paraded before the company commander who calls on any witness to give his story. He then asks the accused if he has anything to say and he will hear any witnesses the accused may call. The company commander may deal with the matter at once if it lies within his jurisdiction, as set out in Note 29 below. If he does deal with the case himself an entry is made in the Minor Offence Report and no charge sheet or entry in the Guard Report will be made. If, however, he cannot or does not want to deal with the case he will refer it to

the C.O. and the accused will be paraded before the C.O. at battalion office. A charge sheet is then prepared, if that has not already been done, and an entry made in the Guard Report. The company commander will attend before the C.O. with the company conduct book. The C.O. will then hear the case and deal with it in one of the ways described below. The accused may always ask that witnesses be sworn and may cross-examine.

Notes 29 and 30 below

When an offence is serious the officer or soldier may be placed in military custody or arrest. Any officer may order into military custody any soldier or any officer of inferior rank (or even of senior rank in exceptional circumstances) and any N.C.O. may arrest any N.C.O. of inferior rank or any soldier, except that a lance-corporal of less than four years' service shall not put any soldier into close arrest except in case of personal violence or when on detached duties. An officer or W.O. may be placed under arrest by a competent authority when charged with an offence, but will not ordinarily be placed under arrest by other than his C.O. unless the needs of discipline so require, nor will he be kept under arrest, unless his C.O. is satisfied, on investigation, that it will be necessary to proceed with the case and to report it to superior authority. An N.C.O. may be placed under arrest by a competent authority when charged with a serious offence. If, however, the offence alleged appears not to be serious, it should be investigated and disposed of without previous arrest. A private soldier charged with a serious offence will be placed under arrest on the commission or discovery of the offence. He will not be placed under close arrest unless confinement is necessary to ensure his safe custody or for the maintenance of discipline. A W.O. or N.C.O. in placing a soldier in arrest should avoid coming into personal contact with him but should obtain if necessary the assistance of one or more private soldiers.

Arrest may be open or close. When not described arrest is close. An officer or warrant officer in arrest does not wear sword, belt or spurs. Close arrest means confinement under guard and unless specially ordered on active service, a soldier in close arrest will not perform duties or bear arms. In case of an officer, W.O. or N.C.O. in close arrest the guard will be another of the same rank. Open arrest means that the accused must not leave barracks or camp, and a private soldier in open arrest will attend parades and other duties. A private soldier who is drunk is to be placed in close arrest, if possible alone. He is to be deprived of his boots, except in cold weather, and be visited every two hours and if necessary by a medical officer. He is not to be brought before an officer for investigation of his charge until sober.

Charges against soldiers in the guard room or remanded for the C.O. are entered in the Guard Report and otherwise in the Minor Offence Report. A Charge Sheet must be furnished within 24 hours to the guard commander and if it is not forthcoming the latter will endeavour to obtain it or report its absence to the officer to whom his Guard Report is furnished. If it is not received at the end of 48 hours, the release of the accused may be ordered. Release may be ordered by the highest authority to whom the case has been referred in the case of an officer and in other cases by the C.O. Charges must be investigated first by the company commander in the presence of the accused. If dealt with by him they go no further, but if by him referred to the C.O. they are entered in the Guard Report and a Charge Sheet is prepared. If a case is disposed of by the company

25. *Arrest*

A.A. 45 and K. 446

K. 446 (b)

K. 446 (c)

K. 446 (d)

K. 446 (g)

K. 445

K. 450 (b)

K. 452 (b)

K. 450 (c), 451 (a)

K. 452 (c)

K. 447

26. *Charges*

M.F.B. 237

M.F.B. 224

M.F.B. 264

A.A. 545 (4); K.

448 (b)

M.M.L. 32

commander, the latter will report this to the orderly room and the entry "disposed of on M.F.B. 224" will be made in the punishment column of the Guard Report.

K. 456

The wording used in the Army Act should be followed in the charge. Forms for every conceivable charge will be found in the First Appendix to Rules of Procedure. A typical form follows:

M.M.L. 699

"The accused, No. 1789405, Pte. Thomas Robinson, 16th Battalion Canadian Active Service Force, is charged with—
When in camp being found beyond the limits fixed by regimental orders without a pass or written leave from his commanding officer, in that he, when encamped at Valcartier Camp was found in the city of Quebec, a place beyond the limits fixed by regimental orders, without a pass or written leave from his commanding officer.

The Charge Sheet may contain more than one charge but a single charge should not use words describing the offence in the alternative.

R. P. 9
M.M.L. 699

27. Drunkenness

A.A. 46 (8)

In addition to being an offence under section 19 of the Act, drunkenness is specially dealt with in paras. 486 and following of K.R. (Can.) and in article 161 of Fin. Reg., C.A.S.F. A private soldier will not (unless he so elects rather than accept his C.O.'s award) be tried by court-martial for an act of simple drunkenness committed when not on active service or when not on duty unless four instances have been recorded against him within 12 months. Ordinarily drunkenness is to be dealt with by a fine on the scale provided in para. 492 and C.B. is only to be ordered when the circumstances of the case are such as to increase its gravity. The scale is: for the first offence nil; for the second \$5; for the third and each subsequent offence \$10; unless within six months, when the fine is \$15, and if within three months \$16.

28. Absence without leave

K. 478

This offence is dealt with in section 15 of the Army Act but special rules are also laid down in paras. 495 and following of K.R. (Can.) and in articles 54 and 149 of Fin. Reg., C.A.S.F. When a soldier is A.W.L. his equipment is to be placed in safe custody and the military police should be notified. Within five days, or less if there is ground for supposing an absentee to have deserted, a report must be made giving particulars. Under P. & A. Reg. a soldier automatically forfeits one day's pay for each day's absence found by the C.O. Six hours A.W.L. counts as a day but a shorter period also counts as a day if the absence prevented the absentee from fulfilling some military duty. If the absence exceeds 24 hours one day's forfeiture is charged for each 24 hours and an extra day is charged for the balance. A member of the Active Militia called out on active service who is A.W.L. for longer than seven days may be tried by court-martial as a deserter.

M.M.L. 549

M.A. 72

29. Jurisdiction of the commanding officer

The jurisdiction of the C.O. to deal summarily with an offence committed by a private soldier is laid down in K.R. (Can.) para. 459 as extending over offences covered by the following sections of the Army Act: 6 (except on active service); 9 (2) (except on active service); 10 (except (1)); 11, 14, 15, 18 (1), (3), 19, 20 (except when the act is wilful), 21, 24, 27 (4), 33 (except cases of enlisting from army reserve), 34 and 40.

If he deals with the matter summarily the C.O. may award

- (i) detention not exceeding 28 days;
- (ii) a fine not exceeding \$16. for drunkenness only;
- (iii) deductions or stoppages from pay for loss of equipment, etc.;

- (iv) on active service field punishment not exceeding 28 days;
- (v) on active service forfeitures of pay not exceeding 28 days.

A.A. 46 (d)

but in each of these cases the soldier will have a right to elect previous to the award to be tried by D.C.M. After election for trial by court-martial he is given 24 hours to think it over and then asked again.

K. 472 (a)
K. 464 (b)

The C.O. also has jurisdiction to inflict punishment of

- (i) confinement to barracks for a period not exceeding 14 days;
- (ii) extra guards and pickets;
- (iii) admonitions.

without the soldier having any right to claim trial by court-martial. The award of the C.O. is final when the accused is marched out but the C.O. may afterwards diminish the award. These minor punishments may not be combined with seven or more days of detention and are to be carried out after the detention is completed. Sentences of detention of under seven days are to be given in hours. Ordinarily detention means being locked up in the cells attached to the guard room; but a sentence of detention may be served in a civil prison.

K. 472 (b)

R.P. 6 (B); K. 599

K. 473

The C.O. must investigate every charge brought before him and this within 48 hours. He may deal with a charge

30. Duty of C.O.
M.M.L. 35; R.P. 2

- (i) by dealing with the case summarily if it is within his jurisdiction as mentioned in Note 29 above;
- (ii) by referring the case to superior authority with the request for a D.C.M. even if it is within his jurisdiction;
- (iii) by dismissing any case, even against an officer, if in his discretion he thinks it should not be proceeded with;
- (iv) when there is insufficient evidence by ordering the release of the accused without prejudice to his being charged again for the same offence;
- (v) by referring a case outside his jurisdiction to superior authority with a request that he be permitted to dispose of the charge summarily;
- (vi) by adjourning the case to have the evidence taken down in writing to be forwarded to superior authority if the C.O. deems this advisable or if the accused is sent for court martial.

K. 459 and 472

K. 459

K. 462; R.P. 4 (A)

K. 463

K. 459 and 525

R.P. 4 (B)

The expression "commanding officer" ordinarily means the officer who under the King's Regulations or custom of the army has the duty of dealing with a charge. An officer commanding a detachment if of field rank may exercise the full powers of the C.O. in awarding summary punishment but if below field rank he may not award detention exceeding seven days unless especially authorized.

31. Meaning of C.O.
K. 439, R.P. 129

K. 475

A C.O. may give to the company commander power to deal with offences which lie within the jurisdiction of the C.O., but the company commander may only award seven days C.B., extra guards and pickets, and admonitions. Extra guards and pickets should only be given for minor offences or irregularities in connection with these duties.

32. Jurisdiction of O.C. company
K. 477

K. 472 (b)

An officer or W.O. may, if he does not elect trial by court-martial, be dealt with summarily by an officer specially authorized under section 47 of the Army Act. In Canada the D.O.C. is such an officer

33. Jurisdiction over officers and W.O.'s

K. 468
A.A. 48 (6); M.A.
71

A.A. 182

34. *Jurisdiction
over N.C.O.'s*

K. 470
K. 471

A.A. 183 (2)

K. 331

A.A. 183 (4)

K. 333

K. 331, 332

35. *Courts-
martial*
K. 459 and 525

A.A. 46, R.P. 4

M.M.L. 32, A.A.
47 (3)

A.A. 46; R.P. 4

M.A. 93

(K.R. (Can.) page 325). He may award forfeiture of seniority of rank or a severe reprimand or reprimand. Otherwise an officer may only be tried by a G.C.M. or F.G.C.M. A W.O. may be sentenced by D.C.M. to be reprimanded or severely reprimanded or to forfeitures, fines and stoppages, or to be reduced, but more serious punishments of a W.O. can only be made by F.G.C.M. or G.C.M.

A C.O. may award to any N.C.O. any deduction allowed under P. & A. Reg. or Fin. Reg., C.A.S.F., subject to right of trial by D.C.M., and he may also inflict a reprimand or severe reprimand or admonition upon an N.C.O. without the latter having the right to trial by court-martial. The C.O. may order an N.C.O. holding an acting or lance appointment to revert to his permanent rank. On active service an N.C.O. may be reduced to any lower grade or to the ranks by any general officer or brigadier specially authorized. Apart from this an N.C.O. holding substantive rank can only be reduced or sentenced to a more serious punishment by court-martial. He may only revert to the ranks to avoid trial by court-martial with the sanction of a brigadier. An N.C.O. sentenced by court-martial to penal servitude, field punishment, imprisonment or detention shall be deemed to be reduced to the ranks.

What has been said with regard to the reduction of N.C.O.'s must be qualified in the case of the N.P.A.M., who retain their rank only at the pleasure of the C.O. Moreover, as the members of the C.A.S.F. are part of the Active Militia called out for active service, it has been suggested that they would (with the exception of the P.F. personnel serving therein) be governed by the provisions with respect to the N.P.A.M., and consequently would retain their rank only during the pleasure of their C.O. For the same reason, W.O.'s in the C.A.S.F. who are not members of the P.F. might be removed by the Minister or Adjutant-General.

In the Army Act offences are stated to be punishable "on conviction by court-martial" but as we have seen a C.O. is given power to deal with certain specified offences summarily and he may deal with other offences if authorized by superior authority. Offences beyond the jurisdiction of the C.O. are dealt with by the superior authority in the ways permitted or by court-martial, but a soldier has no right to demand trial by court-martial except in those cases where he is entitled to make such election rather than accept his C.O.'s award. An officer has no right to claim trial by court-martial except when he elects trial rather than have his case disposed of summarily by a superior authority. Even the offences which the C.O. may deal with summarily may be dealt with by court-martial

- (i) if the accused elects for court-martial, having the right to do so; or
- (ii) if the C.O. applies for a court-martial and his application is granted.

There are three types of court-martial: District, General and Field General. The regimental court-martial has been abolished. Courts-martial are dealt with in sections 48 and following of the Army Act, paras. 524 and following of K.R. (Can.) and in R.P.

In Canada courts-martial may be convened by the Governor in Council or by officers delegated. The Adjutant-General may convene a G.C.M.

A D.C.M. may be ordered by an officer authorized to convene a G.C.M. or some officer deriving authority from him, for example a camp commandant if authorized by the Adjutant-General, as the latter has authority to convene a G.C.M. A D.O.C. may also convene a D.C.M. A D.C.M. should consist of three officers and the president should be a field officer or at least a captain. The maximum punishment it may award is two years' imprisonment with or without hard labour and it may deal with any offence for which imprisonment may be awarded. It may not deal with a charge of murder since the only punishment upon a conviction for murder is death, which is beyond the powers of a D.C.M. Its finding and sentence must be confirmed by an officer authorized to convene a G.C.M. or deriving authority from him, and in Canada by a D.O.C.

A G.C.M. consists of not less than five officers, presided over by a general, if available. Four of its members must be at least captains and all must have held a commission for at least three years. A G.C.M. has jurisdiction over all officers and soldiers for any offence and it alone may impose penal servitude or death. Two thirds of the court must concur in a sentence of death. All findings of a G.C.M. must be forwarded to the Judge Advocate-General who after review will transmit them to the Minister for confirmation or otherwise by the Governor in Council.

An F.G.C.M. has the powers of a G.C.M. It may be convened in the field by any officer in command of any detachment. It consists of not less than three officers (or in very exceptional cases two officers) but all members must concur in a sentence of death, and if it consists of two officers it may only impose imprisonment. Its findings must also be confirmed by the officer authorized.

It is expressly provided that the procedure for courts of enquiry and courts-martial shall be the same as for H.M.'s regular army, and this procedure is elaborately provided for in sections 47 and following of the Army Act, by the Rules of Procedure and by paras. 524 and following of K.R. (Can.). Numerous forms are also provided. Generally speaking the procedure is straightforward with elaborate safeguards for the accused. The latter may be defended by counsel or by an officer appointed by the court or he may be assisted by a soldier who is called "a friend". A prosecutor may be appointed by the officer convening the court-martial who may also be assisted by counsel. The court may be assisted on legal points by the Judge Advocate. The ordinary rules of evidence are followed. In certain cases the accused may be convicted of a lesser offence. The majority of the court decides except in case of the death sentence in which two-thirds must concur. The accused may file a petition from the sentence with the confirming authority.

K.R. (Can.) gives directions for sentences by courts-martial including a table of suggested punishments for various offences. The finding and sentence of a court-martial must be confirmed by the convening authority who may remit, mitigate, commute or suspend the sentence or send the case back to the court for revision. The sentence is promulgated, but not publicly pronounced in the presence of the fellow-soldiers of the officer or man unless this is ordered by the confirming authority, and it is executed either by the military authority or by the civil authorities who are required to receive a prisoner under sentence of a military tribunal.

36. *District
court-martial*
A.A. 48
K. 30 (b)

K. 544

A.A. 48 (6)

M.M.L. 44

A.A. 54 (1) (c)
M.A. 93; K. 30 (b)

37. *General
court-martial*
K. 552

A.A. 48
A.A. 48 (8)

K. 575

38. *Field general
court-martial*
A.A. 49

A.A. 54 (1) (d)

39. *Procedure at
courts-martial*
M.A. 94

K. 549

R.P. 101
A.A. 56

A.A. 53 (8)
K. 574

40. *Sentences*
K. 563

A.A. 57, 57A; K.
569

K. 577
A.A. 58-63, 131
(2); M.A. 131

41. *Punishments*
A.A. 44; K. 474
K. 56
A.A. 44 (11),
notes 15 and 25

The only punishments which may be imposed on officers or soldiers are those specified in the Army Act. K.R. (Can.) gives directions for sentences by courts-martial including a table of suggested punishments for various offences. No provision is at present made for forfeiture of decorations.

42. *Punishment of officers*

The order of punishments of officers is: death; penal servitude for not less than three years; imprisonment, with or without hard labour, for a term not exceeding two years; cashiering; dismissal from His Majesty's service (which unlike cashiering does not prevent an officer from serving His Majesty again); forfeiture of seniority of rank; severe reprimand or reprimand; stoppages.

A.A. 44

43. *Punishment of soldiers*

The order of punishment for soldiers is: death, penal servitude for not less than three years; imprisonment, with or without hard labour, for not more than two years; detention (detention differs from imprisonment in that detention is not ordinarily served in a civil prison); discharge with ignominy; forfeiture of seniority of rank or reduction to a lower grade or to the ranks; in case of an N.C.O. severe reprimand or reprimand; forfeitures for A.W.L. or while serving a sentence of imprisonment, detention or field punishment; fines for drunkenness; and stoppages for loss of kit or damage to army property. A prisoner may be sentenced to a penitentiary or to a jail. There are in addition minor punishments consisting of confinement to barracks, extra guards and pickets and admonitions referred to above.

A.A. 44

M.A. 132

Note 29 above

44. *Field punishment*

When a soldier on active service is guilty of any offence a court-martial may award field punishment not exceeding three months and a commanding officer may award field punishment not exceeding 28 days. Field punishment must be carried out in accordance with the rules laid down. The prisoner may be kept in irons (straps or ropes may be used in lieu) and he may be subjected to the like labour, employment and restraint and dealt with as if he were under sentence of imprisonment with hard labour.

A.A. 44; K. 472

45. *Conduct sheets*

There is a Regimental Conduct Sheet (M.F.B. 263) and a Company Conduct Sheet (M.F.B. 263A) for each soldier to be kept in accordance with paras. 1517 and following of K.R. (Can.). Awards in excess of seven days C.B. and all acts of drunkenness are to be entered in regimental sheets while certain less serious awards are to be entered in Company Conduct Sheets. On Active service conduct sheets are replaced by the Field Conduct Sheet (M.F.W. 178).

K. 1518
K. 1527

46. *General instructions*

A court of inquiry, committee or board may be assembled by the Minister, or by an officer in command to assist in arriving at a correct conclusion on any subject. It may be required to give an opinion on any point, but when the inquiry affects the character or military reputation of an officer or soldier full opportunity must be afforded to him to be present. A court of inquiry, committee or board of officers may consist of two or more members, its composition being determined by the convening officer. Three members, the senior acting as president, will in ordinary cases be sufficient. The procedure for courts of inquiry is laid down in R.P. 124, 125 and

PART V.

Courts of Inquiry and Boards

125A. Courts of inquiry as a general rule sit with closed doors but they may be either open or closed. It is not permissible for a person involved to be represented by counsel. An officer of the Judge Advocate-General's office may be detailed to attend. Unless otherwise specified, the president fixes the time and place for assembly and causes notice of the same to be given to all concerned. If the members cannot agree on an opinion any dissenting member may state in writing the nature and extent of the difference. All proceedings of courts of inquiry, committees and boards for which special forms are not provided are to be written on M.F.B. 303. A medical board is composed entirely of medical officers convened to give a technical medical opinion upon any matters referred to it.

K. 625

K. 627

K. 628

K. 629 (b)

K. 630

Committees and boards differ from courts of inquiry insofar as the objects for which the former are assembled should not involve any point of discipline. They will follow as far as may be convenient the rules for courts of inquiry but are in no way bound by them.

47. *Difference between court and board*

K. 629 (a)

When stores, equipment, clothing or supplies of any kind belonging to the Crown are lost, stolen, destroyed or damaged, or when a deficiency is discovered in any store account, or in cases of losses of animals, other than through natural causes, or of structural damage, the amount of loss will be ascertained. When the amount of loss exceeds \$250, the matter will at once be reported to the D.O.C. and if responsibility is established and the individual responsible agrees in writing to make good the loss by payment or recovery from pay the D.O.C. may accept such arrangement, or if of opinion that the interests of discipline demand an investigation he will convene a court of inquiry. If, having regard to the opinion of the court, the D.O.C. considers that the loss is due to neglect or to any other offence under the Army Act, he will in the case of an officer apply to National Defence Headquarters for instructions and in other cases either convene a court-martial or apply to National Defence Headquarters for authority to dispense with trial by court-martial. If the D.O.C. is of the opinion that the loss is not due to an offence but that no satisfactory explanation has been given, he will report to National Defence Headquarters whether he recommends that the individual responsible should be called upon to pay the whole or a portion of the loss, if not already made good, and in addition whether such individual should be superseded for promotion or removed from his appointment. If the D.O.C. is of opinion that a satisfactory explanation has been given he will write to National Defence Headquarters for authority to write off the loss. If the individual responsible agrees in writing to make good the loss the D.O.C. may, provided such is unnecessary on disciplinary grounds, dispense with an investigation. When the amount of the loss does not exceed \$250 the superior officer of the individual responsible will make a full inquiry, and if he cannot dispose of the case regimentally under the clothing or equipment regulations, will report thereon to the D.O.C., who may allow the individual responsible to pay the loss or give authority to write it off, in which event a full statement of the circumstances with his decision will be attached as a voucher. When the loss is presumably due to theft or fraud the matter will be referred to National Defence Headquarters, except when the loss does not exceed \$5 and no suspicion attaches to any soldier. When it is probable that loss or damage will lead to a claim for compensation against the public by some one not a soldier, the C.O. will at once report the matter to the D.O.C. who will cause it to be investigated further by a court of inquiry. All

48. *Loss of stores, etc.*

K. 633; M.A. 44

K. 634

K. 635

K. 636

K. 637

losses of arms are to be reported to district headquarters and the D.O.C. must submit full details to National Defence Headquarters, recommending how the deficiency should be adjusted and submitting the proceedings of a court of inquiry if one is held.

K. 638

49. *Other objects of inquiry*

K. 639

K. 640-642

K. 643

K. 644

Explosions are to be reported by the D.O.C. by telegraph, stating the time and place of the court of inquiry ordered to investigate. Injuries received other than in action must be investigated and reported. At the expiration of 21 days of A.W.L. a court of inquiry is to be convened under section 72 of the Army Act. A court of inquiry will also be convened on the return of officers or soldiers taken prisoner by an enemy.

Every case of permanent disability arising from injuries received or illness contracted on active service, drill or training or on duty shall be reported on by a medical board and compensation awarded under such regulations as are made, from time to time, by the Governor in Council.

M.A. 74

50. *Committees*

K. 646

K. 647

K. 648

K. 649

Meetings of officers will be called only by the commanding officer who will be responsible that they shall be for a proper purpose. He will annually call a meeting of his officers for the consideration of general regimental business, for the election of a regimental committee and for the election of a band committee if there is a band. The secretary-treasurer of each committee will be responsible to the president for all monies and will keep books of account with vouchers which must be laid before the officers at their annual meeting. No expenditures forming a charge against the officers of the corps shall be incurred without the same being approved at a meeting of officers.

PART VI.

Aid of the Civil Power

51. *Nature of duty*

Cr. C. 95

M.M.L. 246

M.A. 75-85; Cr. C.

48-52 and 87-95;

M.M.L. 246-269;

K. 848-867

The law imposes on all citizens the obligation to come to the aid of the civil power when this aid is required to enforce law and order. We are here concerned with the duty of the soldier in case of riot and other disturbances of the peace. This is dealt with in the Militia Act, in the Criminal Code and in the Manual of Military Law, as well as in K.R. (Can.).

52. *Liability to service*

M.A. 75

Note 18 above

M.A. 120

The Active Militia, or any corps thereof, is liable to be called out for active service, with their arms, ammunition and equipment, in aid of the civil power, in any case in which a riot or disturbance of the peace requiring such service occurs, or is, in the opinion of the civil authority likely to occur, which is beyond the powers of the civil authorities to suppress or prevent. In cases of grave emergency the C.O.T.C. may be called upon. Refusal or neglect to go out with his corps or to obey any lawful order of his commanding officer exposes an officer to a penalty not exceeding \$100 and a man to a penalty of \$20.

53. *Who may call on military forces*

Obviously military forces cannot operate on their own account; they do not displace the civil power. They aid the civil power which is responsible for calling the troops in to its assistance. The Attorney-General of the province concerned, on his own motion or upon receiving notification from a judge that the services of the

Active Militia are required, may by requisition in writing addressed to the D.O.C. require the Active Militia or such portion thereof as the D.O.C. considers necessary to be called out on active service. The form of requisition, its content and effect are laid down.

M.A. 76

M.A. 79-81

The D.O.C. shall call out the Active Militia in response to the requisition. He has no discretion and must act on the requisition, but he has sole control of the number of troops to be employed. He may not call out militia in other districts but if troops outside his district are needed, he will notify the Adjutant-General.

54. *Calling out*

M.A. 77

K. 850

M.A. 78

The officers and men when called out shall without further authority be held to have and may exercise in addition to their military powers and duties, all the powers and duties of special constables but they shall act only as a military body and shall only be liable to obey the orders of their military superior officers, which they are, however, bound to obey. As "special constables, soldiers called out in aid of the civil power are peace officers" and as such they are justified in arresting without warrant suspected offenders for certain offences, but anyone may arrest a person found committing such an offence, and a peace officer is justified in arresting anyone he finds committing any offence (see Crankshaw, p. 48).

55. *Status of officers and men*

M.A. 82

Cr. C. 2 (27)

Cr. C. 30

Cr. C. 31

Cr. C. 35

Troops proceeding in aid will have the requisite quantity of ammunition served out to them. On arrival in the locality of the disturbance, the officer in command will consult with the magistrate and with the senior officer present and will decide as to the disposition of the troops. He will move his force to the place he is directed by the magistrate in regular military order. The troops must always be accompanied by a magistrate to represent and give orders in the name of the civil power. Such orders should be in writing or be given before a reliable witness.

56. *Precautions by military force*

K. 851

K. 852

K. 853

K. 853

Responsibility for the reading of the proclamation under the Riot Act rests entirely with the civil power. It is the duty of the magistrate to request the commander of the troops to take action even if the proclamation has not been read and upon such request the officer must take such military steps as the situation demands. In doing so, he will have absolute discretion as to the action to be taken and as to the arms which the troops shall use and as to the orders which he shall give, including the order to fire. But the magistrate and the officer are each responsible respectively for anything done or ordered by them which is not justified by the circumstances of the case. If the officer thinks it unnecessary to take immediate action, it is not obligatory upon him to do so, nor will he continue any action longer than he thinks necessary. All commands to the troops will be given by the officer. Officers should do what they can to notify the people opposed to them that in the event of the men being ordered to fire, their fire will be effective. If the detachment does not exceed 20 files they will be told off into four sections. No more men will be ordered to fire than are necessary and if the men are divided, the commander will clearly indicate the officer on whose order they will fire. If firing becomes necessary, officers and men must do their duty with coolness and steadiness and care is to be taken to fire only on those persons who are seen to be implicated in the disturbance.

57. *Action by military force*

K. 855

K. 856

K. 857

K. 858

K. 859

K. 860

K. 861

K. 862

K. 863

The Criminal Code defines an unlawful assembly as one of three or more persons who give reason to believe that they will disturb

58. *Reading of Riot Act*

Cr. C. 88 the peace tumultuously, and a riot is an unlawful assembly which has begun to disturb the peace tumultuously. When there are 12 or more persons tumultuously assembled to the disturbance of the public peace it is the duty of the magistrate to read the proclamation provided by the Riot Act, or in Canada, by the Criminal Code. The proclamation reads:

"Our Sovereign Lord the King charges and commands all persons being assembled immediately to disperse and peaceably to depart to their habitations or to their lawful business, upon the pain of being guilty of an offence on conviction of which they may be sentenced to imprisonment for life."

Cr. C. 92 and 93 The penalty for using force to oppose or hinder anyone about to read the proclamation, or continuing to the number of twelve for thirty minutes after the proclamation has been made, is imprisonment for life. The effect of reading the proclamation is to make those who do not disperse guilty of a most serious offence (Crankshaw, p. 100) and if afterwards any of the persons so assembled are killed or hurt in the endeavour to apprehend or disperse them, every person ordering them to be apprehended or dispersed and executing such orders is indemnified against all proceedings in respect thereof. It is not necessary for the magistrate to read the proclamation before calling on the military forces for aid, but if he does read it the position of both himself and the O.C. of the military forces is greatly improved in the eyes of the law.

The position is well put in the Manual of Military Law.

"After the proclamation has been read and an hour (half an hour in Canada) has elapsed, considerable force may, if necessary, be used for the purpose of dispersing the mob. If the mob is committing or evidently about to commit, some outrage calculated to endanger life or property, then, even before the expiration of the hour after the reading of the proclamation, or even without reading the proclamation at all, force may equally be used. But even then deadly weapons ought not to be employed against the rioters, unless they are armed, or in a position to inflict grievous injury on the persons endeavouring to disperse them, or are committing, or on the point of committing some felonious outrage which can only be stopped by armed force."

59. Responsibility for use of force
Cr. C. 94
Cr. C. 95
Cr. C. 48
K. 856; M.M.L. 255

Cr. C. 49

Cr. C. 50
M.A. 82 (2)

Cr. C. 51

60. Withdrawal

M.A. 83; K. 864

The magistrate is guilty of a criminal offence if he omits to do his duty in suppressing the riot and so also is any person who omits to assist the magistrate when required. The magistrate is justified in using and ordering to be used such force as he in good faith believes to be necessary (Crankshaw, p. 53); but if he or the commander of the troops use force unnecessarily they may be held criminally and civilly liable. However, everyone, whether subject to military law or not, is justified in obeying the orders given by the magistrate unless such orders are manifestly unlawful, and is protected from criminal responsibility in using such force as he believes to be necessary for carrying into effect such orders. Further, everyone who in good faith believes that serious mischief will arise from a riot before there is time to procure the intervention of the magistrate or military authorities is justified in using such force as he believes to be necessary to suppress it. Finally, everyone who is bound by military law to obey the lawful command of his superior officer is justified in obeying any command given him by his superior officer for the suppression of a riot, unless such order is manifestly unlawful.

The militia when called out will remain in such strength as the D.O.C. deems necessary until notification is received from the authority which made the requisition that their services are no longer required. On the completion of the duty, an immediate re-

port is to be made by the D.O.C. to National Defence Headquarters and he is also to forward a statement of the expenses which fall upon the province concerned in accordance with the express provisions of the requisition but in re Troops in Cape Breton (1930) S.C.R. 554, the Supreme Court of Canada held that the Attorney General of the province did not have authority to bind the province.

K. 866
K. 867
M.A. 84
M.A. 81

We have so far been dealing with military aid of the civil power given under the orders of the D.O.C. in response to a requisition by the Attorney-General of a province. The question also arises as to what is the duty of individual officers or soldiers to aid in the suppression of riots, whether in co-operation with the police or otherwise. The position of officers and soldiers is the same as other citizens. If their aid has been invoked by the police and the soldiers find that a situation arises in which prompt action is required, although neither magistrate nor police (nor superior officers) are present or available for consultation, they must act on their own responsibility, but they are bound only to use such force as may be reasonably necessary to protect premises over which they are watching and to prevent a serious crime or riot, but they must not use lethal weapons to suppress minor disturbances of a less serious character. Everyone is, in fact, legally justified in using such force as may be reasonably necessary in order to prevent a breach of the peace or to prevent the commission of any offence for which if committed the offender might be arrested without warrant. These include offences in connection with the reading of the Riot Act and the riotous destruction of property.

61. Assistance by individual soldiers

M.M.L. 268

Cr. C. 46
Cr. C. 52

Cr. C. 646

PART VII.

Relations with Civil Law and Civil Authority— Offences under the Militia Act

It has already been observed that the soldier remains subject to the ordinary criminal and civil law enforced in the ordinary civil courts. While this is subject to certain exceptions, it is generally true that the "rule of law", which is a fundamental principle of British political institutions, obtains even in relation to military matters and that officers and soldiers, even while acting as such, may be subject to redress in the criminal or civil courts (Halsbury, 2nd Ed. 1938, Vol. 28, n. 1217 and the recent case of *Jenkins v. Shelley*, (1939) 1 All Eng. R. 786). This rule goes even further than this: the prerogative writs of prohibition, mandamus and habeas corpus may in special circumstances be used against military authorities to prevent the commission or continuance of an injury and an action in damages may be brought against an individual officer who exceeds his authority, but generally speaking such remedies will only lie in cases where tribunals of officers have exceeded their authority or acted maliciously, and not in case of a mere error of judgment. While soldiers may not be protected if they execute a command which is manifestly unlawful, they must carry out commands which are not manifestly unlawful and when they do will be protected (*R.v. Stowe*, (1870) 8 N.S.R. 121; *Kier & Lawson*, Ed. 1928, p. 351; *Dacey*, Ed. 1915, p. 298).

62. Rule of law
Notes 1, 11, 19,
20 and 61

Note 59

M.M.L. 135

M.M.L. 142
M.M.L. 147

Various procedural provisions protect officers and soldiers from actions taken against them. Thus, actions against any officer or

M.A. 134
M.A. 135
person for anything purporting to be done in pursuance of the Militia Act must be laid and tried in the district where the act complained of was done, and must be commenced within six months of the time of the act, and action may not be brought until one month's notice in writing has been served upon the defendant (Quebec C.P. art. 88).

A.A. 144
Officers and soldiers on enlistment do not escape from their civil obligations, but they may not be compelled to appear in person in any court except on account of any charge of or conviction for crime and on account of any debt, etc., when the amount exceeds £30. It is not certain what the effect of this provision is in Canada.

A.A. 141, 144 and 145
The pay, etc., of any soldier is neither assignable nor seizable (Quebec C. P. 599 (6)).

Apparently Canadian officers and soldiers are to-day liable for income tax, even in respect of their pay, because the exception previously given by section 5 (j) of the Income Tax Act is no longer in force, so that an amendment will no doubt have to be made at the next session of parliament.

Succession duties are payable on the estates of soldiers unless the provincial law specially exempts them. In Ontario, Nova Scotia, Alberta and Saskatchewan recent amendments permit the provincial authorities at their discretion to remit the tax in whole or in part.

A.A. 147
Although officers and men are stated to be exempt from jury service under the Army Act, their right to an exemption is probably a matter to be regulated by the laws of the various provinces, some of which provide expressly for this exemption.

M.M.L. 242
Under the law of England, officers and men on active service, even if minors, may make what are called "soldiers' wills", and this law has been carried into effect in the various provinces of Canada (e.g. Art. 849 of the Civil Code of Quebec and R.S. Ont. 1937, C. 164, ss. 13 and 14 as amended in 1939).

63. Trial of a soldier in the criminal courts
K. 484
When a soldier is brought to trial in the criminal courts, an officer is to be detailed from his unit to attend and watch the proceedings, and if required by the court to give information in his possession as to the soldier's character and previous conviction by a civil court or court-martial. He is to take with him money to pay any fine imposed by the court, provided recovery of this may be effected within six months.

64. Relations with civil police
The authority of peace officers extends over soldiers and a police constable may arrest a soldier as if he were a civilian. But frequently, in case of minor offences, the police authorities are willing to turn a soldier over to military escort for military trial.

65. Power of military authorities
M. A. 7
M.A. 86 to 92
Power is given to the officer commanding the Militia in any locality whenever an emergency exists to enter upon and occupy with troops any buildings and lands for defence purposes, and for such purposes to destroy crops, slaughter livestock, take food, etc. The Governor in Council is authorized to make regulations for billeting and transport of troops and stores and for the compensation payable therefor.

The Criminal Code lays down a number of offences which may be committed by civilians or soldiers in connection with military service and these should be briefly noted here, the references being to relevant sections of the Criminal Code: endeavouring to seduce any person serving in His Majesty's forces from his duty or inciting mutiny; inciting desertion or concealing or assisting a deserter; resisting a search warrant for a deserter; enticing a member of the Militia to desert or concealing a deserter; receiving, possessing, keeping, selling or delivering any public stores bearing the government mark; being a dealer in possession of any public store, unless he can show that he came lawfully into such possession; selling or delivering to His Majesty or to any officer or servant of His Majesty any defective military store, or committing a fraud in connection therewith; searching for stores near His Majesty's vessels, wharves or docks; wearing any uniform or distinctive mark relating to wounds received or to service performed in war or any military medal or decoration, or having any certificate of discharge, not belonging to such person; buying, exchanging, detaining or receiving from any soldier, militiaman or deserter any arms, clothing or furniture belonging to His Majesty or causing the colour of such clothing or articles to be changed, or exchanging, buying or receiving from a soldier or militiaman any provisions without leave in writing from the officer commanding the regiment.

66. Criminal offences by civilians in connection with military service

Cr. C. 81
Cr. C. 82
Cr. C. 83
Cr. C. 84
Cr. C. 434

Cr. C. 435

Cr. C. 436
Cr. C. 437

Cr. C. 438

Cr. C. 439

Sections 85 and 86 of the Criminal Code deal with wrongfully communicating information about a fortress, dockyard, arsenal, etc., and were printed in Appendix IV to K.R. (Can.) at p. 309. These sections were also required by K.R. (Can.) to be notified to all personnel. They have been replaced by The Official Secrets Act.

K. 410

1939, c. 49

Sections 103 and following of the Militia Act create a number of offences which are military in character but which have been put under the jurisdiction of the ordinary civil tribunals. In several cases (e.g. sections 109, 111, 114, 116, 119, 121, 122, 123, 124) the offences may be committed by civilians as well as those subject to military law. Sections 104 to 108 create indictable offences, punishable as such by imprisonment not exceeding five years.

67. Offences under the Militia Act

The offences in question and relative punishments are:-

signing a false medical certificate (fine \$400.);	<i>M.A. 103</i>
forging stamped signature of Governor General to commission;	<i>M.A. 104</i>
leaving Canada with any article of public clothing or other public or corps property commits the offence of theft and may be tried therefor;	<i>M.A. 105</i>
officer knowingly claiming pay for drill performed by a man belonging to another corps, or for officers or men not present, or including in any return the name of a person not duly enlisted (indictable offence);	<i>M.A. 106</i>
obtaining by false pretences or unlawfully retaining or keeping pay belonging to another officer or man (indictable offence);	<i>M.A. 107</i>
knowingly signing false parade state or return (indictable offence);	<i>M.A. 108</i>
refusing to give information, or giving false information in connection with making a roll (fine \$20.);	<i>M.A. 109</i>
refusing to make an enrolment or ballot or make a roll, as required by the Act (fine \$50. for an officer and \$25. for a man);	<i>M.A. 110</i>
when drafted, refusing to be sworn (six months' imprisonment for a first offence and 12 months for each subsequent offence);	<i>M.A. 111</i>
impersonating a person on parade or upon any other occasion, for any of the purposes required by the Act (fine \$100.);	<i>M.A. 112</i>
refusing or neglecting to assist a C.O. in making any roll or obtaining any information required for the purpose (fine \$50. for an officer, \$25. for a man);	<i>M.A. 113</i>

- M.A. 114 any person required by the Act to do so, refusing to give information necessary for making or correcting a roll to any officer or N.C.O. (fine \$10.);
- M.A. 115 without lawful excuse neglecting or refusing to attend at parade, drill or training, or refusing or neglecting to obey any lawful order (fine \$10. for an officer and \$5. for a man). Every day's absence constitutes a separate offence;
- M.A. 116 interrupting or hindering any portion of the Militia at drill, or trespassing on the bounds set out by the officer for such drill (fine \$5. and may be taken into custody and detained by any person by order of the C.O. until such drill is over for the day);
- M.A. 117 disobeying any lawful order of a superior officer or being guilty of any insolent or disorderly behaviour towards such officer (fine \$25. for an officer and \$10. for a man);
- M.A. 118 failing to keep arms or accoutrements in good order, or appearing at drill with his arms or accoutrements out of proper order or unserviceable or deficient (fine \$4.);
- M.A. 119 unlawfully disposing or removing any arms, accoutrements, refusing to deliver them up when lawfully required, or having them in his possession without lawful cause, the proof of which shall lie upon him (fine \$20.) and every such person may be arrested by order of the Justice of the Peace before whom a complaint is made upon affidavit showing that there is reason to believe that such offender is about to leave Canada carrying with him any such arms, accoutrements or articles;
- M.A. 120 refusing or neglecting to go out with his corps or obey any lawful order of his superior officer when his corps is lawfully called out to act in aid of the civil power (fine \$100. for an officer and \$20. for a man);
- M.A. 121 resisting any calling out or process prescribed for enrolment by ballot, counselling such resistance, counselling or aiding any enlisted man not to appear at the place of rendez-vous, dissuading any such man from the performance of his duty, doing any act to the detriment of any man enlisted or liable to military service in consequence of his having performed any such duty, interferes with the drill or training of any corps or portion thereof or obstructing any corps or portion thereof on the march or elsewhere (fine \$100.);
- M.A. 122 refusing to furnish transport when lawfully required (fine \$500., or in default, imprisonment for one year with or without hard labour, or both fine and imprisonment;
- M.A. 123 using a rifle range for target practice without authorization (fine \$25.);
- M.A. 124 violating any other provision of the Act when no penalty is imposed (fine \$20.).

Sections 125 and following deal with the procedure whereby the penalties shall be recoverable, that is, with costs on summary conviction before one Justice of the Peace, or imprisonment for a term not exceeding 40 days, if the penalty is not paid and does not exceed \$20., and for a term not exceeding 60 days if it exceeds that sum. Prosecutions against officers can only be brought under the Act on complaint of the officer for the time being commanding the Militia, and prosecutions against men can only be brought on a complaint of the C.O. or adjutant of the corps or captain of the company or corps to which the man belongs or belonged, but anyone commanding the corps or company may authorize any officer of Militia to make such complaint in his name, and prosecutions must be commenced within six months of the offence. Sums of money due under the Act are debts due the Crown. In addition to trial before a civil court a civilian punishable under the Act may also be tried before a court-martial convened by the Governor in Council or some one authorized by him, but this would only be for an offence under the Act.

Every officer or man charged with any offence committed while serving in the militia shall, while so serving, be liable to be tried by court-martial and if convicted to be punished therefor; but he may also be tried for such offence within six months after he has been discharged or after his corps has been relieved from active service,

and he may be tried by court-martial for the crime of desertion at any time without reference to the length of time which has elapsed since his desertion. Every member of the militia called out for active service who absents himself without leave from his corps for a longer period than seven days may be tried by court-martial as a deserter.

The Defence of Canada Regulations made on 3rd September, 1939, under the War Measures Act have many provisions which should be known in a general way to soldiers in Canada, as they may be required to enforce them. In brief these: prohibit access to certain premises and areas; prohibit signals to foreign vessels and aircraft or the possession of signalling apparatus which could be used for a purpose prejudicial to the safety of the state; prohibit having any radio apparatus except as licensed; prohibit having or sending any instructions for utilizing any means of secretly conveying or reporting information, etc. Provision is made for censorship and for safeguarding information useful to the enemy. It is prohibited without an order to make or publish any photograph, sketch or plan of a particular place or area specified by the Minister of Justice or Minister of National Defence; to enter any enemy territory except in course of operations of war; to assist a prisoner of war to escape; to do any act of sabotage, or interfere with communications. Regulation 29 prohibits any person from doing any act

"having reasonable cause to believe that it will be likely to prevent or interfere with the performance of their duties by members of His Majesty's forces or the carrying on of their work by persons engaged in the performance of essential services"

or of doing any act to render a person incapable of efficiently doing his duties. The Minister of National Defence is given power to cause areas to be evacuated and to take precautions against hostile attack. Regulations 37 and 38 deal with the possession, manufacture and transport of fire-arms, ammunition and dangerous articles. It is prohibited by word of mouth to cause disaffection to His Majesty or to spread reports or make statements, false or otherwise, intended or likely to prejudice the recruiting, training, discipline of any of His Majesty's forces. Further regulations deal with the control of shipping and aviation, essential supplies, the control of transport, licensing of explosive factories and ammunition. Regulation 52 reads:

"Any person, if so required by an officer of His Majesty's naval, military or air forces, or by a sailor, soldier or airman, engaged in sentry, patrol or other similar duty, shall stop and answer to the best of his ability and knowledge any question which may be reasonably addressed to him.

"Nothing in this Regulation shall be construed as giving any officer any power to stop or question any person, not being a person subject to the Naval Service Act or to military or air force law, unless such officer is acting in the performance of his duties."

It is an offence to make a false statement in answer to any request made under the Regulations or to obstruct any servant of His Majesty or member of a fire-brigade acting in the course of his duty as such. Persons may be required to produce any required permit or license and power is given to a Justice of the Peace to issue a warrant authorizing any senior police officer or any commissioned officer in His Majesty's forces, together with any other constable or member of His Majesty's forces, to enter and search premises, if he is supplied by information on oath that there is a reasonable ground for believing that a war offence has been committed. Regulation 59 provides that a person in control of any road vehicle in motion shall stop the vehicle on being required by any constable

M.A. 71
M.A. 72

68. Defence of
Canada Regula-
tions

Reg. 3-8
Reg. 10
Reg. 11
Reg. 12
Reg. 13-15
Reg. 16 and 17
Reg. 18
Reg. 20, 23
Reg. 27
Reg. 28

Reg. 29

Reg. 33-36

Reg. 39
Reg. 40-47
Reg. 48, 49
Reg. 50, 51

Reg. 54

Reg. 55
Reg. 57

Reg. 58

in uniform, or by any member of His Majesty's forces in uniform when on duty, who may stop and search the vehicle and may seize any article therein found. Regulation 60 reads:

"Any constable, any member of His Majesty's forces, acting in the course of his duty as such, or any person authorized by the Minister of Justice to act under this regulation, may arrest without warrant any person whom he has reasonable ground for suspecting of having committed a war offence."

69. Dealing with a civilian

It is specifically laid down that

M.A. 116

M.A. 121

Reg. 29

Reg. 52

Cr. C. 46
Cr. C. 52

Cr. C. 646

Reg. 60

- (i) a person interrupting or hindering any portion of the Militia at drill or trespassing on the bounds set for such drill may be taken into custody and detained by order of the C.O. until such drill is over for the day and may incur a penalty from a justice of the peace of \$5;
- (ii) a person interfering with the drill or training of any portion of any corps or obstructing any corps or portion thereof on the march or elsewhere shall incur a penalty of \$100;
- (iii) a person may not do any act having reasonable cause to believe that it be likely to prevent or interfere with the performance of their duties by members of His Majesty's forces;
- (iv) a person must stop and answer questions put to him by an officer on duty or by a soldier on sentry duty;
- (v) a soldier like anyone else may use any necessary force to prevent a breach of the peace, or to prevent certain offences;
- (vi) a soldier may without warrant arrest persons found committing certain offences;
- (vii) a soldier may without warrant arrest persons for a war offence.

Altogether it may be said that the military forces have the authority requisite to do what is necessary to preserve the peace, prevent destruction of property or accomplish some military purpose, but in doing this they may not use more force than is necessary.

PART VIII.

Discipline

70. Introduction

These Notes are intended to cover the subject of discipline as well as of military law. The fact that military law has been dealt with before discipline should not be taken to indicate that the one subject is more important than the other. The principal object of military law is to enforce discipline, and military law in its punitive and exemplary aspects is only called into play when discipline has broken down. The absence of "crime" does not necessarily denote a first class unit, but the continued prevalence of crime may show that its discipline is weak. The definition of discipline formerly made in King's Regulations as "a willing, prompt, and implicit obedience of all ranks to superior authority charged with responsibility" does not go far enough. Discipline is the composite of all those qualities which enable a soldier to be led to attain some military objective with others or alone. It facilitates teamwork and co-operation, and it promotes self-control and individual initiative. Discipline is the keystone of military organization. Without

it the other factors of skill, courage and power cannot be brought into effective use. This is more true in this war than ever before, as success to-day depends on the perfect co-ordination of large numbers of units, each acting in the field to a considerable degree upon individual initiative.

Before dealing with discipline in this broad sense, reference is made to the provisions of K.R. (Can.) which lay down specific rules of great importance.

An officer is at all times responsible for ensuring that good order and the rules and discipline of the service are maintained. He will afford the utmost aid and support to the C.O. It is his duty to notice, repress and instantly report any negligence or impropriety of conduct of warrant officers, N.C.O.'s and private soldiers, whether on or off duty, and whether the offenders belong or not to his particular unit. For all purposes schools of instruction are under the command of the D.O.C. and the personnel of the N.P.A.M. attached to schools will be held to be on active service and may be remanded to their units by the O.C. of the school. O.C.'s are responsible that those under them are notified of section 646 of the Criminal Code, enumerating the offences for which a person may be arrested without a warrant. Officers and soldiers are to acquaint themselves with regulations and orders and ignorance is no excuse. Soldiers are to make themselves personally acquainted with orders which are to be published in accordance with para. 40 or posted as directed by para. 834 of K.R. (Can.), and C.O.'s are to ensure that all soldiers, particularly recruits, are acquainted with the purport of sections 4 to 44 of the Army Act, so as to preclude the possibility of ignorance on their part. The most common offences are listed in Note 21 above.

A C.O. is to use every effort to prevent crime and to suppress any tendency to screen its existence. For offences not of an aggravated character, admonition is the most suitable treatment. Officers, W.O.'s and N.C.O.'s will adopt towards subordinates such methods of command and treatment as will not only ensure respect for authority, but also foster the feelings of self-respect and personal honour essential to military efficiency. They will avoid intemperate language or an offensive manner. An officer will not reprove a W.O. or N.C.O. before privates unless it is necessary for the purpose of making an example. A C.O. should impress upon all under his command the propriety of courtesy in intercourse with all ranks and classes of society and should particularly caution them to pay deference and respect to civil authorities. When in civil court an officer or soldier, except when on duty under arms or acting as an escort, will remove his head-dress while the judge is present.

Officers and men may apply for redress of grievances only in accord with sections 42 and 43 of the Army Act and the notes thereto in the Manual of Military Law. An officer thinking himself wronged by his C.O. and not receiving redress on application to him, may complain to the Army Council, in Canada, the Minister. A man thinking himself wronged may complain to his captain and if his complaint is not redressed, to his C.O. and from the latter to his general officer or brigadier. Other methods of obtaining redress are forbidden, particularly anonymous complaints and publication through the press. Before inspection company commanders will ascertain if any officer or soldier desires to bring any grievance to the notice of the inspecting officer, and all grievances will be investi-

71. Responsibility

K. 406

K. 407

K. 408

K. 409

Note 55 above

K. 411

K. 420

72. General attitude

K. 412

K. 413

K. 414

K. 415

73. Redress of grievances

A.A. 42; K. p. 325

A.A. 45

K. 417

K. 418 gated and settled if possible by the C.O. If not, the grievance will be included in the return prepared for the use of the inspecting officer. Everything in the nature of a combination to obtain redress is strictly forbidden and each individual must speak for himself alone.

K. 419
74. *Testimonials, etc.*

Similarly, deliberations or discussions by officers or soldiers with the object of conveying praise, censure, or any mark of approbation, etc., are prohibited. A C.O. is to refuse to allow subscriptions for testimonials to a superior on quitting the service or on being removed from his corps. Officers and soldiers are forbidden to accept presents in money from public bodies or private individuals in recognition of service and an officer or soldier is forbidden to forward testimonials relating to service or character with any application he may make to superior authority. An officer or soldier is forbidden to write private letters to officials at National Defence Headquarters and the use of outside influence is forbidden.

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K. 422
K. 423
75. *Conduct of officers, etc.*
K. 424

Every officer whose character or conduct as an officer and gentleman has been impugned must submit the case to his C.O. for investigation and if complaint is made that an officer neglects to pay his debts, etc., the facts will at once be reported to National Defence Headquarters, whereupon a court of inquiry will be assembled to ascertain the details. Should it be found that the officer has neglected to pay his debts or become insolvent he shall after three months from the date of the report of the court of inquiry be removed from the service, unless in the meantime he has paid his debts or purged his insolvency.

K. 425
76. *Public relations*
K. 426

Officers and soldiers must at all times guard against being placed in a position that will lay them open to the suspicion of being influenced in the discharge of their duty by improper considerations. No officer or soldier of the P.F. is permitted without the sanction of the Minister to accept a directorship in any public company or firm or to act as agent for any company, etc., and no defence department contract will be entered into with an officer or soldier of the P.F. or with a partnership of which he is a member or a company of which he is a director unless permission is obtained from the Minister. No meetings, etc., for party or political purposes are permitted to be held in barracks or camps, though meetings may be held for hearing addresses on questions of public interest provided they are not of a party or political nature, but even such meetings shall not be held during an election and no officer of the P.F. may act as an agent or scrutineer of a candidate or engage in partisan work in connection with an election, though he may attend a party or political meeting held elsewhere than in barracks. No member of the Active Militia is permitted without the sanction of the Minister to take official cognizance of any private association of a military character and no officer or soldier is allowed to give displays of horsemanship, boxing, etc., without the previous sanction of his C.O.

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K. 428
K. 429
K. 430
K. 431
77. *Military information*
K. 432

Officers and soldiers are forbidden to communicate any military information which might assist an enemy or to publish or communicate to the press any military information or views on any military subject without special authority from Defence Headquarters. If he desires to publish an article he must make written application direct to the secretary, National Defence Headquarters, for permission, accompanied by the article in duplicate. Communications affecting the Militia generally or any arm or service thereof

will be made by Defence Headquarters. In military districts, communications to the press may only be made when they affect the command solely concerned and in this case they will be made through district headquarters. C.O.'s are expected to ensure that a high standard is maintained in the general tone of regimental journals, etc., and one copy of each regimental journal is to be forwarded to Defence Headquarters. Official reports or correspondence will not be furnished to any person not officially entitled to receive them without the special sanction of superior authority. An officer of the P.F. is forbidden without the sanction of the Adjutant-General to assist in preparing candidates for examination in military subjects. An officer or soldier is forbidden to appear as an expert witness in private law suits for the purpose of giving evidence on matters of which he has acquired knowledge in the course of his official duty.

An officer may not send accounts of or comments on any manoeuvres he may witness abroad to anyone unless he has obtained the permission of National Defence Headquarters to do so, and every officer officially authorized to attend manoeuvres out of Canada is to render to National Defence Headquarters a report on them.

All gambling in garrisons, camps, barracks or cantonments is forbidden. This includes bookmaking or acting as agent for a bookmaker. No officer or soldier shall bring into barracks for his personal consumption any wine or spirituous or malt liquor. In every unit there shall be an order directing that a soldier who is suffering from venereal disease is to report himself sick without delay and this order will be brought to the attention of all personnel of the unit at intervals not exceeding three months. Concealment of venereal disease will be dealt with under section 11 of the Army Act.

The importance of the rules laid down in K.R. (Can.) summarised above is self-evident, but, as already remarked, the subject of discipline involves more than compliance with regulations, or even the habit of strict obedience to orders. A military unit consists of some hundreds of different individuals with different habits, feelings and aims, each hitherto accustomed to do much what he wanted, when he pleased. Upon giving up the ways of private life, the soldier must be conditioned to a hard life in crowded association with others. Diverse elements have to be worked into a unit and trained to act as if they were one. But it is of paramount importance to-day that the process of training should not make men into unthinking automatons. Robot soldiers will not win the kind of war we are now fighting. No longer may men throw off responsibility as they put on uniform. From the outset, their training should habituate them to obey orders, of course, but also to use their own initiative and their own intelligence to gain the desired military objective. What we are interested in learning here are the conditions under which men can be led to work together with the utmost efficiency, either as a single unit, or as individuals, each using his native intelligence, quickened by training and experience.

To gain such an objective, the training of the educated soldier of to-day should be treated as a genuine educational adventure and it should be made as interesting, as exciting, as possible. This approach and something of the method to be followed are discussed in Liddell Hart's "The Defence of Britain," where there is useful

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78. *Morals*

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79. *Discipline generally*

material for military study and teaching. So far at least, this war is being fought on the lines discussed by him and every soldier would do well to know what they are. One thing is clear: this type of war and the type of training required for it throw greater burdens than ever before on the ranks, hardly less than upon officers and instructional staff. Properly handled, the problem of meeting the needs of the present war should arouse the interest and stimulate the efforts of every officer and man.

80. Efficiency

These ideas involve modification in the objects and methods of training and discipline which apparently are being made in the British Army. But more than ever, there is no place for fumbling, incompetence, inefficiency. Every detail of military life, even the apparently unimportant, must be performed just as well as it can, because only in this way is ingrained the habit of doing nothing short of the best and of getting things done without fuss or delay. This standard of efficiency should obtain right through training. The initial enthusiasm and natural intelligence we can expect in the Canadian forces should not be wasted. There must be the constant encouragement of rapid progress.

81. Drill

Nothing kills initiative and enthusiasm more rapidly than spending more time on drill than the minimum necessary to accomplish its three important objects. These are: to train men physically, to train them to move in the easiest way, and to form the habit of prompt obedience. But even these are only means to an end, and from the outset, the object of all training, defeating the enemy, must be kept in mind. The instructor must devote every faculty at its highest pitch to the task of getting his squad to make the most rapid progress of which it is capable. Each instructor should study his own and other methods and find out by trial and error the particular manner of instruction best suited to his personality, and in this he should be assisted by the guidance of specially skilled officers. The task of training a unit to-day ranks as a major pedagogical operation, requiring study and planning. The instructor should prepare himself for his job just as the teacher or successful athletic coach.

82. Parades

Unnecessary parades should be avoided. Calling troops to parade before they are needed is just plain inefficiency and it should be recognized as such by the officers as it has always been by the men. A parade should be ready when it is needed and it should move to its next duty when it is ready. Officers and N.C.O.'s should not keep a parade standing about while they discuss what to do.

83. Attention to routine

Everything possible should be done to reduce the ordinary events of daily life to a frictionless routine. This can only be accomplished if close attention is paid to the interior organization of the corps. All ranks must know what to do. Orders should be clear, regularly posted as long in advance as possible, and communicated to the men for whom they are intended, so that there is no room for misunderstanding. Things should be kept in their place. Men should be encouraged to develop a sense of personal responsibility to see that the collective way is made easy. The development of the habit of doing things well and on time through close attention to every task will train the officer and his men in habits of efficiency, so that he and they will come to have faith in themselves and in each other.

This confidence between ranks depends on another factor. Each man must know that he will get a scrupulously fair deal. This must extend outside the orderly-room and into every corner of the soldier's life. Officers and others in authority should exercise constant care to see that leave and duty rosters are fairly kept and that N.C.O.'s neither grant favours nor discriminate against individuals on personal grounds.

84. Fairness of treatment

K.R. (Can.) lays it down that superiors should endeavour to "foster the feelings of self-respect and personal honour essential to military efficiency." Men in the army as elsewhere respond far more readily to encouragement and praise than to censure though that may be necessary on occasion. Sarcasm invites retaliation and leads to a lasting grudge, and those in authority should avoid its use and see that man who are habitually sarcastic at their comrades' expense are made to understand the effect. Habits of cleanliness of person, clothing and equipment promote smartness and add to self-respect. The strongest basis for self-respect is confidence in himself and pride in the corps.

85. Self-respect

Ours is a force of men who have voluntarily offered themselves to serve their country in the cause of democracy, and it will do discipline no harm if officers and N.C.O.'s recognize that men of all ranks are fellow-workers in a common cause, to be treated with the respect which one man owes to another in a free country. The officer who allows the authority of his rank to blind him to himself as others see him will be careless, unpunctual, impatient and unfair, without even recognizing how much this affects the efficiency of the unit. Such a man may not be followed when danger strips the authority of his rank from him. The officer who recognizes that rank involves responsibilities to be discharged and who acts on that recognition is the kind of officer that superiors and subordinates alike want to have with them.

86. Officers' attitude

Efficiency and morale depend primarily upon the condition of the men, depending in turn on cleanliness, rest and good food, and all officers are responsible to see that everything possible is done for the men about these. They should, for example, see that rest periods and halts are properly used and that there is no noise after lights out. The most important single factor affecting the health and morale of the soldier is the food he gets and yet it is often ignored. Every officer should do everything he can to see that the men are properly fed and that the best possible use is made of the rations supplied. The difference in the meals served out of the same rations by a good cook and a bad cook is unbelievable until experienced. The quartermaster should have assisting him a small committee of officers (and even men) to plan the work of the cooks. Advantage should be taken of opportunities to send cooks to cooking schools. Civilian experts should be consulted. If necessary supplementary equipment should be acquired out of regimental funds. The perfunctory request of the orderly officer "Any complaints?" which only serves as a source of irritation, should be replaced by constant attention to the most important single factor in military life, affecting discipline and morale no less than physical condition.

87. Welfare of men

As training proceeds all superiors should give all ranks under their command frequent opportunities to take their places, and in this way test and train men for permanent promotion and make them ready to take a superior's place in an emergency. This practice

88. Training for responsibility

stimulates men's interest in their work. A good officer, therefore, should not make himself indispensable; he should try to make himself dispensable by qualifying subordinates and thus make himself available for promotion without loss of efficiency. Furthermore, officers, N.C.O.'s and men should be accustomed to anticipate positions of difficulty and danger. This should be done in not too formal a fashion, but all ranks should be led to habituate themselves always to consider what they would do if "A raid came from over there" or "A mine blew up over there," and so on. In this way they will become accustomed to take prompt, reasoned action in the moment of danger and tend to take the right course instinctively.

89. Leisure

Men should be encouraged to make the best possible use of leisure. A good unit will encourage men constantly to add to their knowledge of the various techniques of the service in which they are. Keen men will spend part of their time in increasing their military efficiency and their keenness will encourage the others. Men should also be encouraged to teach other languages, and every opportunity should be taken to institute educational courses. Even if only a few of the officers and men carry books, a lending library can be established anywhere. Every advantage should be taken of opportunities to organize games, concerts and lectures. Healthy rivalry can be encouraged between companies or even platoons and sections. Officers and men should be prepared with lectures and stunts or games for use in bad weather.

90. Acceptance of responsibility

Given the kind of treatment outlined, officers and men may be accustomed to deal with each other honestly and without the buck-passing which has been too great a feature of army life. Buck-passing is caused by fear and the refusal to accept responsibility, two cardinal military sins. These two faults in turn came from poor training and the habit of savagely telling-off subordinates. Such treatment always has bad psychological consequences. Officers and men should be treated with fairness and moderation and trained to accept responsibility rather than being frightened into dodging it.

91. Morale

The connection between discipline and morale is shown in the termination of the last war. Russia crumpled when her discipline dissolved in 1917, because of a collapse of morale. We won because Germany was first to follow Russia into dissolution. Military victory followed the break-down of discipline, which came when the morale of soldiers and civilians was shattered by the blockade and the realization that they could not win. When an army is said to have a good morale, it means that its members have faith in their cause and confidence in their ability to go on until they succeed.

Someone may say that the regimental officer, even the staff-officer, has little to do with morale. Nothing could be further from the truth. Morale is not induced by high-powered propaganda. It results from confidence, confidence of the soldier in the ability of himself and his officers and unit to do efficiently what they have to do, and confidence that their efforts will not be wasted but that they will contribute to a good cause. This confidence will be brought about by efficiency in small details more than by anything else. For one thing, the soldier's principal impression of the war is obtained from the conduct of his section or platoon commander and those above him. Superficially, it is easy to explain the spirit of a great school or a first rate regiment by saying that it had the advantage of a great leader, as if his mere presence had achieved the result. No

doubt the result in large or small part is due to the leader, but it is never due to his mere presence. It is due to scrupulous attention to every relevant detail, insistence upon nothing but the best, and encouragement to achieve it. Efficiency of this kind is at the core of a good morale. This is borne out by the experience of all those who were with the Canadian Corps in the Battle of Amiens of 8th August, 1918.

From the very moment when small units started moving on sealed orders to successive rendez-vous, the men in the ranks began to glimpse the seeds of success in the perfection of the organization, and they knew that they were trained, fit, ready. As the troops moved along the roads at night through the rain with the front of each lorry barely ten feet behind the vehicle ahead, small incidents occurred to establish faith in that victory. Across the former German line an hour after the opening barrage had stopped, our engineers were raising overhead wires and laying light railway tracks. Others were taping out trench lines for defence systems. As troops, looking for their new positions, came through the first villages captured a few hours before, military policemen were directing traffic at cross-roads as at Piccadilly Circus, and the sign-posts were in English. No one can overestimate the effect upon morale, upon physical endurance, of the troops' knowledge that they were in an attack which was so organized and so carried through. The feeling was created not by lectures, nor by propaganda—there were none of those—but by the recognition of the effective use of an efficient force.

With that great exploit our own Corps Commander had much to do, but it is an open secret that the present officer commanding the C.A.S.F. contributed greatly to the staff work, which merited and won the admiration of historians and the respect of the men themselves. General Ludendorff called that 8th August "the black day of the German Army".

The Canadian Corps played a part far beyond its size in the last war. Canadians can play a great part in this; but in view of the changed character of the war even higher standards of efficiency must be achieved. With pride in the country, pride in the record, faith in the cause, Canada and its forces will have the strength and fortitude to endure until they assist in achieving the conditions of a lasting peace. And to this end the officer and the man should recall to themselves that the object of their training and their discipline, of their work and, if necessary, of their deaths, is that the officer and the man, both of them, and others like them, everywhere, may be free to lead lives of individual significance, in a world where peoples can be free from the fear of unprovoked aggression.