



Naval Discipline Act 1860

1860 CHAPTER 123

PART IV

COURTS-MARTIAL

Constitution of Courts-martial

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The following Regulations are hereby made with respect to Courts-martial:

- (1) A Court-martial shall consist of not less than Five nor more than Nine Officers:
- (2) No Officer shall be qualified to sit as a Member of any Court-martial held in pursuance of this Act unless he be a Flag Officer, Captain, Commander, or Lieutenant of Her Majesty's Navy on Full Pay :
- (3) A Court-martial shall not be held unless at least Three of Her Majesty's Ships, not being Tenders, and not commanded by Officers under the Rank of Lieutenant, are together at the Time when such Court-martial is held:
- (4) No Officer shall sit on a Court-martial who is under Twenty-one Years of Age:
- (5) No Court-martial for the Trial of a Flag Officer shall be duly constituted unless the President is a Flag Officer, and the other Officers composing the Court are of the Rank of Captain, or of higher Rank :
- (6) No Court-martial for the Trial of a Captain in Her Majesty's Navy shall be duly constituted unless the President is a Captain or of higher Rank, and the other Officers composing the Court are Commanders or Officers of higher Rank:
- (7) No Court-martial for the Trial of any Person below the Rank of Captain in Her Majesty's Navy shall be duly constituted, unless the President is a Captain or of higher Rank, nor unless in addition to the President there are Two other Members of the Court of the Rank of Commander or of higher Rank:

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- (8) The Prosecutor shall not sit on any Court-martial for the Trial of a Prisoner whom he prosecutes :
- (9) The Admiralty shall have Power to order Courts-martial to be held for the Trial of Offences under this Act, and to grant Commissions to any Officer of Her Majesty's Navy on Full Pay authorizing him to order Courts-martial to be held for the Trial of such Offences :
- (10) An Officer holding a Commission from the Admiralty to order Courts-martial shall not be empowered to do so if there is present at the Place where such Court-martial is to be held any Officer superior in Rank to himself, although such last-mentioned Officer may not hold a Commission to order Courts-martial ; and in such a Case such last-mentioned Officer may order a Court-martial, although he does not hold any Commission for the Purpose:
- (11) If any Officer holding a Commission from the Admiralty to order Courts-martial, having the Command of a Fleet or Squadron, and being in Foreign Parts, die, be recalled, leave his Station, or be removed from his Command, the Officer upon whom the Command of the Fleet or Squadron devolves, and so from Time to Time the Officer who shall have the Command of the Fleet or Squadron, shall, without any Commission from the Admiralty, have the same Power to order Courts-martial as the first-mentioned Officer was invested with :
- (12) If any Officer holding a Commission from the Admiralty to order Courts-martial, and having the Command of any Fleet or Squadron of Her Majesty's Ships in Foreign Parts, shall detach any Part of such Fleet or Squadron, he may, by Commission under his Hand, empower the Commanding Officer of the Squadron or Detachment ordered on such separate Service, and in case of his Death or ceasing so to command the Officer to whom the Command of such separate Squadron or Detachment shall belong, to order Courts-martial during the Time of such separate Service, or until such Authority shall be revoked, or until the Officer commanding the Detachment shall come under the Command of another superior Officer, or shall return to the United Kingdom:
- (13) The Officer ordering a Court-martial shall not sit thereon:
- (14) The President of every Court-martial shall be named by the Authority ordering the same, or by any Officer empowered by such Authority to name the President:
- (15) No Commander or Lieutenant shall be required to sit as a Member of any Court-martial when Four Officers of a higher Rank and junior to the President can be assembled at the Place where the Court-martial is to be holden:
- (16) Subject to the foregoing Regulations, whenever a Court-martial shall be held the Officer appointed to preside thereat shall summon, according to Seniority, all the Officers present at the Place where the Court-martial shall be held to sit thereon, until the Number of Nine, or such Number, not less than Five, as is attainable, is complete; subject to this Proviso, that the Admirals and Captains, being Superintendents of Her Majesty's Dockyards, shall not be summoned to sit on Courts-martial unless specially directed to do so by Orders from the Admiralty.

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Proceedings of Courts-martial

LI Sittings of Courts-martial.

A Court-martial held in pursuance of this Act shall sit from Day to Day, with the Exception of Sundays, until Sentence is given, and its Proceedings shall not be delayed by the Absence of any Member, so that not less than Five are present; and no Member shall absent himself unless compelled so to do by Sickness or other just Cause, to be approved of by the other Members of the Court; and if any Member of a Court-martial shall absent himself therefrom, in contravention of this Section, he shall be dismissed from Her Majesty's Service, or shall suffer such other Punishment as may be awarded by a Court-martial.

LII Appointment of officiating Judge Advocate.

In the Absence of a Judge Advocate or his Deputy, the Officer who is to be the President of the Court-martial may appoint any Person to officiate as Judge Advocate at the Trial; and the Judge Advocate of any Fleet for the Time being, or his Deputy, or the Person officiating as Judge Advocate, herein-after included under the Term " the Judge Advocate," shall administer an Oath to every Witness appearing at the Trial.

LIII Proceedings at Trial.

As soon as the Court is assembled, the Names of the Officers composing the Court shall be read over to the Prisoner, who shall be asked if he objects to being tried by any Member of the Court. If the Prisoner shall object to any Member, the Objection shall be decided by the Court. If the Objection shall be allowed, the Place of the Member objected to shall be filled up by the Officer next in Seniority who is not on the Court-martial, subject to the Regulations herein-before contained.

LIV Oaths to be administered to Members of Courts-martial.

Before the Court shall proceed to try the Prisoner, the Judge Advocate shall administer to every Member of the Court the following Oath; that is to say,

I do swear, That I will duly administer Justice according to Law, without Partiality, Favour, or Affection; and I do further swear, that I will not on any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of this Court-martial, unless thereunto required in due Course of Law. So help me GOD.

LV Oath to be administered to Judge Advocate, &c.

As soon as the said Oath shall be administered to the Members of the Court-martial, the President shall administer to the Judge Advocate the following Oath:

I do swear, That I will not upon any Account, at any Time whatsoever, disclose or discover the Vote or Opinion of any particular Member of the Court-martial, unless thereunto required in due Course of Law. So help me GOD.

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LVI Summoning Witnesses.

Every Person, Civil, Naval, and Military, who may be required to give Evidence before a Court-martial, shall be summoned by the Judge Advocate ; and all Persons so summoned and attending as Witnesses before any Court-martial shall, during their necessary Attendance in or on such Court, and in going to and returning from the same, be privileged from Arrest, and shall, if unduly arrested, be discharged by the Court out of which the Writ or Process issued by which such Witness was arrested, or if such Court be not sitting, then by any Judge of the Superior Courts of Westminster or *Dublin*, or the Court of Session in *Scotland*, or of the Courts of Law in the *East* or *West Indies* or elsewhere, according as the Case shall require, upon its being made to appear to such Court or Judge, by any Affidavit in a summary Way, that such Witness was arrested in going to or returning from or attending upon such Court-martial; and all Witnesses so duly summoned as aforesaid who make default in attending on such Courts, or attending refuse to be sworn or make Affirmation, or being sworn or having made Affirmation refuse to give Evidence, or to answer all such Questions as the Court may legally demand of them, or prevaricate in giving their Evidence, shall be liable to be attached in the Court of Queen's Bench in *London* or *Dublin*, or the Court of Session, or Sheriff Depute or Stewarts Depute, or their respective Substitutes, within their several Shires and Stewartries, in *Scotland*, or Courts of Law in the *East* or *West Indies*, or in any of Her Majesty's Colonies, Garrisons, or Dominions in *Europe* or elsewhere, respectively, upon Complaint made, in like Manner as if such Witness after having been duly summoned and subpoenaed had neglected to attend on a Trial in any Proceeding in the Court in which such Complaint is made, or had refused, to be sworn, or on being sworn had refused to give Evidence, or to answer all such Questions as the Court may legally demand, or had prevaricated in giving Evidence, or if the Court-martial shall think fit, in case any such Person belong to Her Majesty's Navy, being called upon to give Evidence at any Court-martial, shall refuse or neglect to attend to give his Evidence upon Oath or Affirmation, or shall prevaricate in his Evidence, or behave with Contempt to the Court, such Court-martial may punish every such Offender by Imprisonment not longer than Three Months, in case of such Refusal, Neglect, or Prevarication, nor longer than One Month in the Case of such Contempt; and every Person not subject to this Act who may be so summoned to attend shall be allowed and paid his reasonable Expenses, under the Authority of the Admiralty, for such Attendance.

LVII Penalty on Persons giving false Evidence.

Every Person who, upon any Examination upon Oath or upon Affirmation, before any Court-martial held in pursuance of this Act, shall wilfully and corruptly give false Evidence, shall be liable to the Penalties of wilful and corrupt Perjury.

LVIII Where Persons are insane at the Time of Offence or Trial.

Where it shall appear upon the Trial by Court-martial of any Person charged with an Offence that such Person is insane, the Court shall find specially the Fact of his Insanity, and shall order such Person to be kept in strict Custody in such Place and in such Manner as to the Court shall deem fit, until the Directions of the Admiralty thereupon are known; and it shall be lawful for the Lords of the Admiralty to give Orders for the safe Custody of such Person during Her Majesty's Pleasure, in such Place and in such Manner as they shall think fit.

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LIX Report of Proceedings of Courts-martial.

Every Judge Advocate, or Person officiating as Judge Advocate, shall transmit with as much Expedition as may be the original Proceedings and Sentence of every Court-martial attended by him to the Commander-in-Chief or senior Officer, who shall transmit them to the Secretary of the Admiralty for the Time being, and any Person tried by a Court-martial shall be entitled, on Demand, to a Copy of such Proceedings and Sentence, at any Time not sooner than Six Months after the Trial if the same takes place in the *Mediterranean*, Three Months if at any other Naval Station within *Europe*, and Twelve Months if elsewhere, (upon Payment for the same at the Rate of Fourpence *per Folio* of Seventy-two Words,) but no such Demand shall be allowed after the Space of Three, Years from the Date of the final Decision of such Court-martial.