

Whoever, in foreign parts, forces a safe guard, is to suffer death.

ART. 55. Whoever, belonging to the armies of the United States, employed in foreign parts, shall force a safe guard, shall suffer death.

Whoever relieves the enemy with money, victuals, etc. is to suffer death, or other punishment, etc.

ART. 56. Whoever shall relieve the enemy with money, victuals, or ammunition, or shall knowingly harbor or protect an enemy, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

Death, or other punishment, etc. for holding correspondence with, or giving intelligence to, the enemy, etc.

ART. 57. Whoever shall be convicted of holding correspondence with, or giving intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as shall be ordered by the sentence of a court-martial.

Public stores taken in the enemy's camp, etc. to be secured for the service of the United States, etc.

ART. 58. All public stores taken in the enemy's camp, towns, forts, or magazines, whether of artillery, ammunition, clothing, forage, or provisions, shall be secured for the service of the United States; for the neglect of which the commanding officer is to be answerable.

Death, etc. for the officers and soldiers of any garrison, etc. compelling a commander to give up to the enemy, etc.

ART. 59. If any commander of any garrison, fortress, or post, shall be compelled, by the officers and soldiers under his command, to give up to the enemy, or to abandon it, the commissioned officers, non-commissioned officers or soldiers, who shall be convicted of having so offended, shall suffer death, or such other punishment as shall be inflicted upon them by the sentence of a court-martial.

Sutlers and retainers subject to orders, etc.

ART. 60. All sutlers and retainers to the camp, and all persons whatsoever, serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.

Officers having brevets or commissions of a prior date to those of the regiment in which they serve may take place, etc. according to the ranks given them, etc.

ART. 61. Officers having brevets or commissions of a prior date to those of the regiment in which they serve, may take place in courts-martial and on detachments, when composed of different corps, according to the ranks given them in their brevets, or dates of their former commissions; but in the regiment, troop, or company, to which such officers belong, they shall do duty and take rank, both in courts-martial and on detachments, which shall be composed only of their own corps, according to the commissions by which they are mustered in the said corps.

If, upon marches, etc. different corps happen to join, etc. the officer highest in rank, etc. to command, unless, etc.

ART. 62. If, upon marches, guards, or in quarters, different corps of the army shall happen to join, or do duty together, the officer highest in rank of the line of the army, marine corps, or militia, by commission there, on duty, or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President of the United States, according to the nature of the case.

Engineers not to assume, nor be subject to, any duty beyond the line of their immediate profession, except, etc.

ART. 63. The functions of the engineers being generally confined to the most elevated branch of military science, they are not to assume, nor are they subject to be ordered on, any duty beyond the line of their immediate profession, except by the special order of the President of the United States; but they are to receive every mark of respect to which their rank in the army may entitle them, respectively, and are liable to

be transferred, at the discretion of the President, from one corps to another, regard being paid to rank.

ART. 64. General courts-martial may consist of any number of commissioned officers, from five to thirteen, inclusively; but they shall not consist of less than thirteen, where that number can be convened, without manifest injury to the service.

General courts-martial may consist of any number of commissioned officers, from 5 to 13, etc.

ART. 65.* Any general officer commanding an army, or colonel commanding a separate department, may appoint general courts-martial, whenever necessary. But no sentence of a court-martial shall be carried into execution until after the whole proceedings shall have been laid before the officer ordering the same, or the officer commanding the troops for the time being; neither shall any sentence of a general court-martial, in time of peace, extending to the loss of life, or the dismissal of a commissioned officer, or which shall, either in time of peace or war, respect a general officer, be carried into execution, until after the whole proceedings shall have been transmitted to the secretary of war, to be laid before the President of the United States, for his confirmation or disapproval, and orders, in the case. All other sentences may be confirmed and executed by the officer ordering the court to assemble, or the commanding officer, for the time being, as the case may be.

General officers, or colonels, commanding, etc. may appoint general courts-martial, etc. No sentence of a court-martial to be carried into execution until the proceedings have been laid before the officer ordering it, etc. No sentence of a general court-martial in time of peace, extending to loss of life, etc. or which, in peace or war, respects a general officer, to be carried into execution until the proceedings have been laid before the President, etc.

ART. 66. Every officer commanding a regiment or corps, may appoint, for his own regiment or corps, courts-martial, to consist of three commissioned officers, for the trial and punishment of offences not capital, and decide upon their sentences. For the same purpose, all officers commanding any of the garrisons, forts, barracks, or other places, where the troops consist of different corps, may assemble courts-martial, to consist of three commissioned officers, and decide upon their sentences.

Officers commanding regiments or corps, may appoint courts-martial, etc. for offences not capital.

Officers commanding garrisons, etc. may assemble courts-martial, etc.

ART. 67. No garrison or regimental court-martial shall have the power to try capital cases, or commissioned officers; neither shall they inflict a fine exceeding one month's pay, nor imprison, nor put to hard labor, any non-commissioned officer or soldier, for a longer time than one month.

No garrison or regimental court-martial empowered to try capital cases, etc.

ART. 68. Whenever it may be found convenient and necessary to the public service, the officers of the marines shall be associated with the officers of the land forces, for the purpose of holding courts-martial and trying offenders belonging to either; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be received and obeyed.

Whenever convenient, etc. the officers of marines shall be associated with officers of the land force, for holding courts-martial, etc.

ART. 69. The judge-advocate, or some person deputed by him, or by the general, or officer commanding the army, detachment, or garrison, shall prosecute in the name of the United States, but shall so far consider himself as counsel for the prisoner, after the said prisoner shall have made his plea, as to object to any leading question to any of the witnesses, or

The judge-advocate, etc. to prosecute in the name of the U. States, but shall consider himself counsel for the prisoner, so far, etc.

* Modified by act of 29th May, 1830—see chap. 147.

The judge-advocate to administer an oath to each member of the court, etc.

Form of the oath.

any question to the prisoner, the answer to which might tend to criminate himself; and administer, to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of the regimental and garrison courts-martial:

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

The President of the court to administer an oath to the judge-advocate.

Form of the judge-advocate's oath.

And as soon as the said oath shall have been administered to the respective members, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following words:

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

When a prisoner, from obstinacy, etc. stands mute, etc. the court may proceed to trial, etc.

ART. 70. When a prisoner arraigned before a general court-martial shall, from obstinacy and deliberate design, stand mute, or answer foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had regularly pleaded not guilty.

When a member is challenged by a prisoner he must state the cause, etc.

ART. 71. When a member shall be challenged by a prisoner, he must state his cause of challenge, of which the court shall, after due deliberation, determine the relevancy or validity, and decide accordingly; and no challenge to more than one member at a time shall be received by the court.

Members to behave with decency; and the youngest in commission to vote first.

ART. 72. All the members of a court-martial are to behave with decency and calmness; and, in giving their votes, are to begin with the youngest in commission.

Witnesses to be examined on oath.

ART. 73. All persons who give evidence before a court-martial, are to be examined on oath or affirmation, in the following form:

Form of the oath of a witness.

"You swear, or affirm, (as the case may be) the evidence you shall give in the cause now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

In cases not capital, etc. depositions may be taken, and

ART. 74. On the trials of cases not capital, before courts-martial, the deposition of witnesses, not in the line or staff of

the army, may be taken before some justice of the peace, and read in evidence: *Provided*, the prosecutor and the person accused are present at the taking the same, or are duly notified thereof.

read, etc. provided, the prosecutor and accused are present, etc.

ART. 75. No officer shall be tried but by a general court-martial, nor by officers of an inferior rank, if it can be avoided: nor shall any proceedings or trials be carried on excepting between the hours of eight in the morning, and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court-martial, require immediate example.

No officer to be tried but by a general court-martial, etc.

No proceedings except between eight and three, unless, etc.

ART. 76. No person whatsoever shall use any menacing words, signs, or gestures, in presence of a court-martial, or shall cause any disorder or riot, or disturb their proceedings, on the penalty of being punished, at the discretion of the said court-martial.

No person to use menacing words or gestures, etc. in presence of a court-martial, etc.

ART. 77. Whenever any officer shall be charged with a crime, he shall be arrested and confined in his barracks, quarters, or tent, and deprived of his sword, by the commanding officer. And any officer who shall leave his confinement, before he shall be set at liberty by his commanding officer, or by a superior officer, shall be cashiered.

When an officer is charged with a crime he is to be arrested, deprived of his sword, etc.

ART. 78. Non-commissioned officers and soldiers, charged with crimes, shall be confined, until tried by a court-martial, or released by proper authority.

Non-commissioned officers and soldiers charged with crimes to be confined until tried, etc.

ART. 79. No officer or soldier who shall be put in arrest, shall continue in confinement more than eight days, or until such time as a court-martial can be assembled.

Officers and soldiers in arrest not to continue in confinement more than eight days, etc.

ART. 80. No officer commanding a guard, or provost marshal, shall refuse to receive or keep any prisoner committed to his charge, by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime with which the said prisoner is charged.

No officer commanding a guard etc. to refuse to receive a prisoner, provided, etc.

ART. 81. No officer commanding a guard, or provost marshal, shall presume to release any person committed to his charge, without proper authority for so doing, nor shall he suffer any person to escape, on the penalty of being punished for it by the sentence of a court-martial.

No officer commanding a guard etc. to release any person committed to his charge, etc.

ART. 82. Every officer or provost marshal, to whose charge prisoners shall be committed, shall, within twenty-four hours after such commitment, or as soon as he shall be relieved from his guard, make report in writing, to the commanding officer, of their names, their crimes, and the names of the officers who committed them, on the penalty of being punished for disobedience or neglect, at the discretion of a court-martial.

Officers to whom prisoners are committed, to make report, etc. within 24 hours, of their names, crimes, etc.

ART. 83. Any commissioned officer, convicted before a general court-martial, of conduct unbecoming an officer and a gentleman, shall be dismissed the service.

Commissioned officers convicted, etc. of conduct unbecoming an officer, etc. to be dismissed, etc.

ART. 84. In cases where a court-martial may think it proper to sentence a commissioned officer to be suspended from command, they shall have power also to suspend his pay and

In cases where a court-martial suspends an officer from command, they are empowered

ed to suspend his pay and emoluments, etc.

Where a commissioned officer is cashiered for cowardice or fraud, the crime, name, etc. of the delinquent, to be published, in the newspapers, etc.

Where the number of officers is not adequate to form a general court-martial, the commanding officer of the detachment, etc. to report to the commanding officer of the department, etc.

No person to be sentenced to death, but by the concurrence of two-thirds of the members of a general court-martial, etc. nor more than fifty lashes to be inflicted.

No person liable to be tried and punished by a general court-martial for any offence committed more than two years before, unless, etc.

Every officer authorized to order a general court-martial, empowered to pardon or mitigate any punishment, etc. except, etc.

The colonel, etc. of a regiment or garrison, etc. may pardon or mitigate, etc.

Judge-advocates, etc. to transmit, as expeditiously as possible, the original

emoluments for the same time, according to the nature and heinousness of the offence.

ART. 85. In all cases where a commissioned officer is cashiered for cowardice or fraud, it shall be added, in the sentence, that the crime, name, and place of abode and punishment, of the delinquent, be published in the newspapers in and about the camp, and of the particular state from which the offender came, or where he usually resides, after which it shall be deemed scandalous for an officer to associate with him.

ART. 86. The commanding officer of any post or detachment, in which there shall not be a number of officers adequate to form a general court-martial, shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall order a court to be assembled at the nearest post or detachment, and the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

ART. 87.* No person shall be sentenced to suffer death, but by the concurrence of two-thirds of the members of a general court-martial, nor except in the cases herein expressly mentioned; nor shall more than fifty lashes be inflicted on any offender, at the discretion of a court-martial; and no officer, non-commissioned officer, soldier, or follower of the army, shall be tried a second time for the same offence.

ART. 88. No person shall be liable to be tried and punished by a general court-martial for any offence which shall appear to have been committed more than two years before the issuing of the order for such trial, unless the person, by reason of having absented himself, or some other manifest impediment, shall not have been amenable to justice within that period.

ART. 89. Every officer authorized to order a general court-martial, shall have power to pardon or mitigate any punishment ordered by such court, except the sentence of death, or of cashiering an officer; which, in the cases where he has authority (by article 65) to carry them into execution, he may suspend, until the pleasure of the President of the United States can be known; which suspension, together with copies of the proceedings of the court-martial, the said officer shall immediately transmit to the President, for his determination.

And the colonel or commanding officer of the regiment or garrison, where any regimental or garrison court-martial shall be held, may pardon or mitigate any punishment ordered by such court to be inflicted.

ART. 90. Every judge-advocate, or person officiating as such, at any general court-martial, shall transmit, with as much expedition as the opportunity of time and distance of

* So much of these rules and articles as authorizes the infliction of corporal punishment by stripes or lashes, was specially repealed by act of 16th May, 1812—See chapter 74, section 7. By act of 2d March, 1833, chap. 159, the repealing act was repealed, so far as it applied to the crime of desertion, which, of course, revived the punishment by lashes for that offence.

place can admit, the original proceedings and sentence of such court-martial to the secretary of war, which said original proceedings and sentence shall be carefully kept and preserved in the office of said secretary, to the end that the persons entitled thereto may be enabled, upon application to the said office, to obtain copies thereof.

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

ART. 91. In cases where the general, or commanding officer, may order a court of inquiry, to examine into the nature of any transaction, accusation, or imputation, against any officer or soldier, the said court shall consist of one or more officers, not exceeding three, and a judge-advocate, or other suitable person, as a recorder, to reduce the proceedings and evidence to writing, all of whom shall be sworn to the faithful performance of their duty. This court shall have the same power to summon witnesses as a court-martial, and to examine them on oath; but they shall not give their opinion on the merits of the case, excepting they shall be thereto specially required. The parties accused shall also be permitted to cross-examine and interrogate the witnesses, so as to investigate fully the circumstances in the question.

ART. 92. The proceedings of a court of inquiry must be authenticated by the signature of the recorder and the president, and delivered to the commanding officer: and the said proceedings may be admitted as evidence by a court-martial, in cases not capital, or extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony cannot be obtained. But as courts of inquiry may be perverted to dishonorable purposes, and may be considered as engines of destruction to military merit, in the hands of weak and envious commandants, they are hereby prohibited, unless directed by the President of the United States, or demanded by the accused.

ART. 93. The judge-advocate, or recorder, shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to your evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God."

After which, the president shall administer to the judge-advocate, or recorder, the following oath:

"You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court, and the evidence to be given in the case in hearing: So help you God."

The witnesses shall take the same oath as witnesses sworn before a court-martial.

nal proceedings and sentences of general courts-martial to the secretary of war, in whose office they shall be preserved.

The party tried by a general court-martial entitled to a copy of the sentence, etc.

Where the general, etc. may order a court of inquiry, etc. the court to consist of not exceeding three, and a judge-advocate, etc. to be sworn, etc.

Courts of inquiry to have the same power as courts-martial to summon witnesses, etc. but are not to give an opinion unless specially required, etc.

Proceedings of courts of inquiry to be authenticated by the signatures of the recorder and president, etc. and may be admitted as evidence by courts-martial in cases not capital, etc. provided, etc.

Courts of inquiry prohibited, unless directed by the President, etc.

The judge-advocate, etc. to administer an oath to the members.

Form of the oath.

The president of the court to administer an oath to the judge-advocate.

Form of judge-advocate's oath.

Witnesses to take the oath, etc.

When a commissioned officer dies, etc. the major of the regiment, etc. is immediately to secure all his effects, etc. make an inventory, and transmit it to the war department, etc.

ART. 94. When any commissioned officer shall die, or be killed, in the service of the United States, the major of the regiment, or, the officer doing the major's duty in his absence, or, in any post or garrison, the second officer in command, or the assistant military agent, shall immediately secure all his effects or equipage, then in camp or quarters, and shall make an inventory thereof, and forthwith transmit the same to the office of the department of war, to the end that his executors or administrators may receive the same.

When a non-commissioned officer or soldier dies, etc. the commanding officer of the troop, etc. is to take an account of what effects he died possessed of, etc. and transmit it to the department of war, etc. and the effects to be accounted for, etc.

In case officers authorized to take care of the effects of deceased officers and soldiers, have occasion to leave the regiment, etc. they are to deposit the effects in the hands of the commanding officer, etc.

Officers, etc. in the corps of engineers, etc. to be governed by the preceding rules, etc.

Officers and soldiers of any troops, militia or others, being mustered, etc. when acting with regular forces to be governed by these rules and articles, subject to be tried by courts-martial, etc. save that the courts are to be composed of militia officers.

Officers serving by commission from the authority of any particular state, when employed in conjunction with the regular forces, to take rank next after all officers of like grade in the regular forces, etc.

ART. 95. When any non-commissioned officer or soldier shall die, or be killed, in the service of the United States, the then commanding officer of the troop, or company, shall, in the presence of two other commissioned officers, take an account of what effects he died possessed of, above his arms and accoutrements, and transmit the same to the office of the department of war; which said effects are to be accounted for, and paid, to the representatives of such deceased non-commissioned officer or soldier. And in case any of the officers, so authorized to take care of the effects of deceased officers and soldiers, should, before they have accounted to their representatives for the same, have occasion to leave the regiment, or post, by preferment, or otherwise, they shall, before they be permitted to quit the same, deposit, in the hands of the commanding officer, or of the assistant military agent, all the effects of such deceased non-commissioned officers and soldiers, in order that the same may be secured for, and paid to, their respective representatives.

ART. 96. All officers, conductors, gunners, matrosses, drivers, or other persons whatsoever, receiving pay, or hire, in the service of the artillery, or corps of engineers, of the United States, shall be governed by the aforesaid rules and articles, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers of the other troops in the service of the United States.

ART. 97. The officers and soldiers of any troops, whether militia or others, being mustered and in pay of the United States, shall, at all times, and in all places, when joined, or acting in conjunction, with the regular forces of the United States, be governed by these rules and articles of war, and shall be subject to be tried by courts-martial, in like manner with the officers and soldiers in the regular forces, save only that such courts-martial shall be composed entirely of militia officers.

ART. 98. All officers serving by commission from the authority of any particular state, shall, on all detachments, courts-martial, or other duty, wherein they may be employed in conjunction with the regular forces of the United States, take rank next after all officers of the like grade in said regular forces, notwithstanding the commissions of such militia or state officers may be elder than the commissions of the officers of the regular forces of the United States.

ART. 99. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general or regimental court-martial, according to the nature and degree of the offence, and be punished at their discretion.

ART. 100. The President of the United States shall have power to prescribe the uniform of the army.

ART. 101. The foregoing articles are to be read and published once in every six months, to every garrison, regiment, troop, or company, mustered, or to be mustered, in the service of the United States, and are to be duly observed and obeyed by all officers and soldiers who are, or shall be, in said service.

SEC. 2. *And be it further enacted*, That, in time of war, all persons not citizens of, or owing allegiance to, the United States of America, who shall be found lurking, as spies, in or about the fortifications or encampments of the armies of the United States, or any of them, shall suffer death, according to the law and usage of nations, by sentence of a general-court martial.

SEC. 3. *And be it further enacted*, That the rules and regulations by which the armies of the United States have heretofore been governed, and the resolves of Congress thereunto annexed, and respecting the same, shall henceforth be void and of no effect, except so far as may relate to any transactions under them prior to the promulgation of this act, at the several posts and garrisons, respectively, occupied by any part of the army of the United States.

[Approved, April 10, 1806.]

CHAPTER 54.

An act authorizing the employment of the land and naval forces of the United States, in cases of insurrection.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled*, That, in all cases of insurrection, or obstruction to the laws, either of the United States, or of any individual state or territory, where it is lawful for the President of the United States to call forth the militia for the purpose of suppressing such insurrection, or of causing the laws to be duly executed, it shall be lawful for him to employ, for the same purposes, such part of the land or naval force of the United States as shall be judged necessary, having first observed all the pre-requisites of the law in that respect.

[Approved, March 3, 1807.]

All crimes not capital, and all disorders, and neglects, &c. though not mentioned in the preceding articles, to be taken cognizance of by courts-martial.

The President empowered to prescribe the uniform of the army.

The foregoing articles to be read and published, once in every six months, to every garrison or regiment, &c.

In time of war, all persons found lurking about fortifications or the encampments of the armies, to suffer death, &c.

The rules and regulations by which the armies have been heretofore governed, to be henceforth void, &c. except, &c.

In all cases of insurrection, or obstruction of the laws, &c. where it is lawful for the President to call forth the militia, &c. he is authorized to employ the land or naval force, for suppressing or enforcing, &c.