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BIBLIOTECA



COURTS OF INQUIRY.

As some difficulty is experienced in determining how far the regulations and customs which relate to the holding of Courts of Inquiry in time of peace should be applied to the conditions of active service, the following instructions are issued for guidance.

1. The tendency is, on the whole, to hold too many Courts of Inquiry. Their machinery is cumbrous, and has therefore been replaced in many cases by special procedure, for example that devised for cases of accidental and self-inflicted injuries. It may, further, sometimes be preferable that an inquiry should be conducted by an officer with expert qualifications of either a legal or other technical character, rather than by a Court of Inquiry.

2. The following are the principal classes of cases in which Courts of Inquiry will be held:—

(a) Under Section 72 of the Army Act, in cases of absence without leave, where it is improbable that the absence is caused by the individual concerned having become a battle casualty.

(i.) Such Courts cannot be held until the soldier has been absent from his duty for a period of 21 clear days; the day on which the soldier became absent and the day on which the Court is assembled, must be excluded from the reckoning.

(ii.) Owing to the consequences which follow on the declaration of such Courts, they should only be held in cases of grave suspicion that the soldier has absented himself without leave, and is not a battle casualty.

(iii.) If it subsequently becomes known that the absentee is a Prisoner of War, the finding of the Court will be regarded as having been superseded by the subsequent information.

(iv.) If an officer or man has already been reported "Missing," and a Court subsequently finds that he has illegally absented himself, the finding of the Court will supersede the previous report.

(v.) The declaration of the Court should be in the form set out in Rule of Procedure 125, note 3. If a Court of Inquiry, purporting to be held under Section 72 of the Army Act, exceeds its statutory powers and finds as a fact that the soldier deserted to the enemy, that part of the finding will have no legal effect.

(b) In cases where it is considered desirable to inquire into the conduct of an officer or man taken prisoner by the enemy.

With regard to such cases, it should be noted that a Court of Inquiry under paragraph 675 King's Regulations, cannot be held until the return of the prisoner. Consequently where a Court is held in the absence of the individual whose conduct is the subject of inquiry, the functions of such a Court will be limited to the collection of evidence, and it will not be ordered to make a report. Such cases should be reported as "Missing, believed prisoners of war (Court of Inquiry case)."

(c) Suicide, and accidental injuries to officers or other ranks in respect of which the purposes of investigation and record are not satisfied by the recording of statements on Army Form W.3428.

(d) Loss of public money (*see* G.R.O. 1911 as amended by G.R.O. 2112).

(e) Fires. Special instructions governing the procedure in these cases have been issued to all concerned. (Circular Letter S.S. 499, dated 10th October, 1917.)

(f) Loss of Government property, otherwise than by fire. In this connection it should be noted that, in order to obviate the waste of time involved on active service by the application of paragraph 670 King's Regulations to all cases, authority has been granted to General Officers Commanding, to dispense with Courts of Inquiry when they are satisfied that no good purpose would be served by convening them, and when no damage to civilian life or property is involved. (Authority:—Q.M.G. Circular Letter No. 10161 (Q.A. 2), dated 21st May, 1917.)

(g) Accidents caused by prematures in guns, etc., which present exceptional features.

(h) Accidents caused by a War Department vehicle involving injury to civilian life or property; unless the G.O.C. Division or O.C. Troops is satisfied that no useful purpose would be served by convening one. (*See* G.R.O. 1173 as amended by G.R.O.s 2539 and 2875.)

3. The following general principles are applicable to all Courts of Inquiry:—

(a) It is the duty of a Court of Inquiry not to suppress or avoid probing into details on sympathetic grounds. The primary duty of ascertaining the whole truth must be borne in mind throughout.