

54. Making away with equipment. —Any person subject to this Act who commits any of the following offences, that is to say, --

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

NOTES

1. *Clause (a).—In the absence of some positive act of making away with e.g. pawning, selling etc., a charge of making away with should not be preferred under this clause, When, therefore, articles of the description in the clause are found to be merely deficient through, the culpability of a soldier, it would be proper to prefer a charge under clause (b) of losing by neglect the articles in question, The particular mode of making*

away with should be alleged in the particulars although it does not affect the kind of offence, but only its gravity in relation to the amount of the sentence to be imposed on conviction.

2. Before an accused can be convicted under this clause, evidence must be adduced at the trial that he had been issued with the articles either by

(a) examining a witness who actually issued the articles to the accused, or

(b) by a witness on oath producing any receipt for the articles and proving the signature of the accused, or

(c) by oral evidence that on a certain date prior to the offence the accused was in possession of those articles e.g., at a kit inspection.

3. (a) A charge under clause (a) or (b) of making away with or losing etc., property not mentioned in those clauses e.g., mess property or property of a comrade would be bad though if the act amounted to theft, dishonest misappropriation or criminal breach of trust, it would be punishable under [AA.s.52](#) or [69](#); if the facts show wilful act or neglect, the person might in certain circumstances be charged with an offence under [AA.s.63](#).

(b) Any other thing should be ejusdem generis i.e., part of the accused's kit which he is bound to maintain or his general military equipment supplied by the Government; such 'other thing' should be specified in the statement and particulars of the charge.

4. Clothing in this clause may include hospital clothing issued to a person subject to AA, or civilian clothing issued from military sources.

5. Whenever it is desired that the offender should, on conviction of an offence under this clause or clause(b), be awarded stoppages under [AA.s.71\(1\)](#) in respect of the value of the articles which need be made good to the Govt/public, then the value must be stated in the particulars of the charge [[AR30\(6\)](#)] and proved as follows:

(a) Value of an article having an official value will be proved by calling a witness who can, on oath, estimate the value (inclusive of authorised departmental expenses) of the article at the date of the offence upon the basis of its age and/or condition and by reference to the regulations which should be produced for fixing the value of the article at that age or in that condition.

(b) When the article has not an official value, competent evidence is required to prove the approximate value.

(c) When an article has been damaged but not rendered unserviceable, competent evidence is required to prove the pecuniary amount of the damage, which will be either the cost of repairing it, if it can be repaired, or the cost of repair plus any ultimate loss of value due to the act of the accused.

6. Clause (b).—This is not intended to punish a person for a deficiency in his kit occasioned by accident or mere carelessness but for loss by culpable neglect. On the other hand, the fact that a person has not got his arms, service necessities, etc., at a time when it was his duty to have them (i.e., at a kit inspection), is prima facie evidence of his having lost them by neglect. The onus of proving "neglect" always remains on the prosecution. But once the loss is proved, the court is entitled to expect the accused to offer some explanation of it, and if he gives none, it is open to the court to conclude that the loss must have been due to his negligence. If he gives an explanation which may reasonably be true and which if true is inconsistent with negligence, even if the court is not convinced of its truth, he must be acquitted, since a reasonable doubt as to his negligence then remains.

7. Where a court of inquiry (as laid down in [AA.s.106](#)) has been held and has found a person to be deficient in certain articles, then upon his trial under this clause a certified copy of the record in the regimental books, on IAFD-918, showing that such articles were deficient is prima facie evidence that they were deficient and of their value, if stated ([AA.s.142\(3\)](#) and [\(4\)](#)). If no evidence, except IAFD-918 is obtainable, the prosecution would be justified in proceeding on that alone, and if no evidence is given on the part of the accused to disprove the facts stated therein, the court may convict. Where, however, the accused gives or produces evidence in contradiction of the declaration of the court of inquiry with regard to any of the articles in question, it will become necessary for the prosecution to produce other evidence in support of its case in so far as such articles are concerned for which purpose the court might, if necessary, grant an adjournment under [AR 82](#). If for any reasonable cause, such as lapse of time since the deficiency arose, no witnesses are available to rebut the evidence produced by the accused,

the court must use its discretion as to its finding in respect of the articles in question. In all cases. where IAFD-918 is not produced at the trial evidence must be produced to show that at some previous specified date the accused has been in possession of the articles alleged to be deficient. In cases of desertion or absence without leave the form will usually show as missing some articles which the person in fact brings back with him. The court must not, of course, convict him in respect of articles so returned if in serviceable condition or those the value of which has not to be made good to the public.

8 *losing by neglect the property of a comrade, or a decoration, is not an offence under this clause as that class of property or decoration is not mentioned therein. Also see [notes 3](#) and [4](#) above,*

9. *As to stoppages and evidence of value of the property, see [note5](#) above,*