**106. Inquiry into absence without leave**.— (1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

## *NOTES*

*1. For procedure of courts of inquiry held under this section, see* [*AR.183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183)*.*

*2. In the event of a person subject to AA being absent without leave for a period of 30 clear days, a court of inquiry must be assembled at once, unless before such court of inquiry has been assembled it has come to the knowledge of the person's CO that he has been apprehended or has surrendered or that he was involuntarily absent (e.g., in prison).In that case no court of inquiry will be held and the fact of his absence and of the deficiency (if any) of his clothing, etc., must be proved by oral evidence at any subsequent court-martial. As to dispensing with the court of inquiry in the case of a reservist who has failed to attend for training, etc., see Rule 9 of the Indian Reserve Forces Rules, 1925 (Part III).*

*3. In calculating the period of 30 days, the day on which the person became absent and the day on which the court of inquiry assembles must both be excluded. If the court of inquiry assembles a day too soon, the record of its declaration is not admissible in evidence, as an entry has not made in the regimental books in accordance with* [*AAs.142(3)*](file:///F:\work_on_nlp\CHAPTER-11\222.htm#AA142)*.The person, however, should be declared illegally absent and charged with absence as from the day on which absence commences.*

*4. Prescribed manner.—See* [*ARs183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183) *and* [*140*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~5\Index.htm#AR140)*.Evidence must be taken on oath or affirmation.*

*5. Before declaring any deficiency of arms, etc., the court of inquiry will satisfy itself by evidence that the absentee was in possession of the missing articles within a reasonable period before the date of absenting himself. It will record the values of the unexpired wear of all articles of Government property including arms, equipment, public clothing, etc., found to be deficient.*

*6. The property of Government entrusted to his care—i.e., Government property issued to him for his use or entrusted to his care for military purposes.*

*A court of inquiry under this section does not inquire respecting a deficiency of public money or stores which had been in the absentee's charge.*

*7. The declaration of the court of inquiry should contain the date and place from which the person absented himself, the date of the deficiency (if any) of clothing, etc., and the place where it occurred. Under* [*AR.183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183) *and this section the witnesses will be sworn/ affirmed, but not the members of the court of inquiry. As to the form of declaration, see* [*notes to AR183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183)*; the actual values of missing articles will be stated.*

*8. In order to make the record admissible in evidence it must be a record in the regimental books of the unit to which the person belonged at the time of the holding of the court of inquiry and entered by the then CO [*[*AA.s.142(3)*](file:///F:\work_on_nlp\CHAPTER-11\222.htm#AA142)*]. The actual proceedings of the court of inquiry (which ought, under* [*AR183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183)*, to be destroyed as soon as its declaration is recorded in the regimental books) are not admissible in evidence.*

*The record of the finding of the court of inquiry will be admissible, notwithstanding that the person had already surrendered or been apprehended, provided that such surrender or apprehension had not come to the knowledge of his CO when the court of inquiry assembled.*

*9. As soon as the declaration of illegal absence has been made and recorded the person is struck off the strength of the unit as a deserter, but he does not thereby cease to belong to the corps in which he is enrolled; see* [*Regs Army para.376*](file:///F:\DSR_VOLUME_1\CHAPTER_08\134.htm#376)*,*

10. When a person, who has been "struck off" as a deserter rejoins, the CO. if satisfied that the evidence does not justify a charge of desertion, may legally deal with the case as one of absence without leave.

*11. As to disposal of deserter's property, see* [*Army and Air Force (Disposal of Private property. Act, 1950 (Part 111).*](file:///F:\MML_VOLUME_3\CHAPTER__04\460.htm#THE_ARMY_AND_AIR_FORCE____DISPOSAL_OF_PRIVATE_PROPERTY_)

*12. As to the period of limitation for trial, see* [*AA.s.122*](file:///F:\work_on_nlp\CHAPTER-10\211.htm#AA122)*.*

*13. This section and* [*AR.183*](file:///F:\THE_ARMY_RULES,1954_WITH_APPENDICES_AND_NOTE\CHAPTER~6\353.htm#AR183) *do not apply to the enrolled persons of the TA. When subject to AA. see* [*AA.s.2(l)(e)*](file:///F:\work_on_nlp\CHAPTER_1\PRELIMINARY.htm#AA2_I_i)*; Rule 24 of the TA Rules, 1948 and scheduled II to Rule 24.*