

SECRET
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WAR CABINET

MESOPOTAMIA COMMISSION - DISCIPLINARY ACTION

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244Memorandum by the Judge Advocate GeneralS. of S.

I am of opinion that a Court of Inquiry is preferable to a Court-Martial for the following reasons :-

1. It would be practically impossible to commence trial by Court-Martial in November, 1917, the latest date by which this can be done under the Army Act.
2. In the event of trial by Court-Martial it would be necessary first to take a summary of evidence and afterwards to call all the witnesses at the trial. This would necessitate taking away a large number of military witnesses from their duties in various theatres of war twice instead of once.
3. In the case of a Court of Inquiry a Judge of the High Court could be made legal assessor or under the Army (Courts of Inquiry Act) 1916 a member of the Court of Inquiry.
4. The Army Council on the recommendation of the Court of Inquiry could recommend His Majesty to remove or dismiss an Officer from the Service, while the maximum punishment which a Court-Martial could inflict for any offences which could possibly be charged is cashiering or dismissal.
5. A Court of Inquiry could deal with matters affecting the Military reputation of the Officers in question as well as offences. It is only fair to these Officers that this should be conceded in view of Rule 124 (F) of the Rules of Procedure under the Army Act which provides :-

(F) "Whenever any inquiry affects the character or military reputation of an officer or soldier, full opportunity must be afforded to the officer or soldier of being present throughout the inquiry, and of making any statement and of giving any evidence he may wish to make or give, and of cross-examining any witness whose evidence, in his opinion, affects his character or military reputation, and producing any witness in defence of his character or military reputation."

The Officers concerned did not before the Mesopotamia Commission have the right of being present throughout the inquiry, of cross-examining witnesses, or making a statement in their defence.

(Sgd.) F. CASSEL

Judge Advocate General

9th July, 1917