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CLOSING ADDRESS OF DEFENSE OFFICER

Gentlemen, Private Emalie has been charged with desertion and with loss of kit by neglect. So far as the first charge is concerned, there is no evidence that he absented himself with the intention of not coming back. There is considerable evidence, firstly, that he did not at any time deliberately and without excuse absent himself at all, and secondly, that while he was absent, he did make contact with his unit from time to time and took steps -- however irregular we might consider them -- he did take action which in his own inexperience did tend to suggest that he intended to return at an early date. At the time he first left the unit he was not absent. He was on Christmas leave. He subsequently applied for and was granted approximately one-half of his annual leave. It was during this annual leave that he went up to the hunting lodge north of Pointe du Bois, which was quite legitimate. He had a number of days left of his leave to go there, and then he was snowbound.

Now, gentlemen, from the evidence I think you will appreciate that he was in a difficult position. Not only was he unable to get out on account of the snow, but he also was faced with having no facilities to let anyone know where he was. It is therefore quite understandable that it was not until some time after that that he arrived back in Winnipeg. Then, this compassionate situation appeared and he wired the unit, which was the proper thing to do, and then he proceeded to Toronto. Now, that is a questionable point -- as to whether he should have waited for a reply or not. From what I understand of the evidence, there was no reply at all. I think it was quite unreasonable for him to proceed back immediately to the unit, once having applied for leave, and perhaps on arriving back here finding the leave had been granted and then having to go all the way back east again. Besides, the compassionate situation as represented was urgent and it is quite understandable why he immediately assumed the leave would be granted and went on to Toronto.

I don't propose reviewing all his difficulties on re-entering Canada and the trouble he had getting from Toronto out here again. A great many of those circumstances were beyond his control and he did arrive out here just about as quickly as the situation permitted. When he arrived back he undoubtedly should have reported in and not been found in town as he was. However, the very fact that he was apprehended in uniform so close to his home station, after having wired and written the unit several times during his absence, all strongly suggest that even if he was actually absent without leave, it was certainly not with the intention of staying away, which, after all, does constitute the essence of desertion.

To sum up, gentlemen, he didn't desert. If he was absent without leave it was only through a series of misunderstandings and doubts, and as the man did not know whether his application for extension of leave had even been granted or not he assumed he was quite legitimately absent.

Regarding the loss of kit, it isn't as if he was absent at the time he lost his kit. He was going on leave at the time and there is evidence that he had authority to entrust his kit to someone else. Then we have Private Berg's statement that he accepted responsibility for some of the accused's kit. Regarding the disposition of that kit, it is pretty well accepted in the Army that a man's kit is unprotected physically even if it is stored in a barrack block which is locked, as a lock can still be broken. However, during this man's absence from

*M. J.*