

A person steals who without the consent of the owner fraudulently and without a claim of right made in good faith "takes" and "carries away" anything capable of being stolen "with intent, at the time of such taking permanently to deprive the owner thereof.
Sec 50 P 116 MML.

The accused states that this bundle was just inside the doorway. The accused admitted that the clothing and liquor were not his. Therefore I submit that he took this bundle, carried it away and the Court must decide that he meant to deprive the owner of the clothes.

There is no alternative but to find the accused guilty of theft of at least these articles that he admitted having in his possession and giving away. The defending officer stated that he was picked up some two hours after the alleged offence. How do we know? There was no evidence as to the time when the theft took place. If the accused was picked up some two hours after the alleged offence there is no doubt that he had lots of time to consume the liquor stolen from the cafe, so the accused would be under the influence at the time he was arrested. He gave away one dress he admitted, did he give away the other articles?

PL5 348 But drunkenness is not an excuse for crime. This man was sober enough to see the bundle in the hallway as he states. He was sober enough to pick up four bottles of liquor and stow them carefully away in his pockets without dropping them. He was sober enough to remember going into another cafe and sober enough to remember that he gave away one of the dresses.

I submit the accused is guilty as charged in the third charge. Definitely he is guilty on his own admission of taking most of articles if he is "not Guilty" of all the articles. He took the several articles and carried them away that according to MML p118 constitutes theft or stealing.

On the alternative charge, the accused is guilty of having in his possession the articles listed in the charge, on his own admission. Pte MacDonald also states that the accused had the articles, as listed in the charge, in his possession with the exception of one dress which the accused admits giving away.

(Sgd) G.C. Scott Lt. *SCX*

PLEA IN MITIGATION OF PUNISHMENT

In Sept 1944 the accused landed in France and in that month joined his unit the Essex Scots. After he had fought with them for a period of just more than one month, he went to hospital with an infected foot. Upon discharge, about 1 Nov 44 the hospital recommended that he be re-boarded because of previous amputations to two fingers on his left hand. The accused does not wish to be re-boarded and does wish to return to his unit. The peculiar circumstances of this AWL charge can be briefly stated. On 8 Nov 44 during the early evening a bottle of liquor was smuggled into the guardroom, the accused had a good share of it. There is no evidence offered that he forced his way out of confinement because as a matter of fact he walked out unguarded and through an unlocked door. He fully realized that something would result from his previous nights drunken frolic and could not bring himself to return to face possible charges to which he blamed the consequence of bad liquor. In view of his previous record, his front line service and his willingness to return to the front and in addition the circumstances under which he left the guardroom I ask the Court to consider every possible leniency.

SCX