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There may have been some misunderstanding as officers do have their first button undone. There is certainly no proof that when he was apprehended that it was in substance undone. The charge furtherreads that it was indisorder. There is still no proof his battle dress being in disorder. The accused has testified on oath that he may have spoken the words that appear at the end of each charge, but they certainly were not used with the meaning that is ascribed to them. He had been arrest and he was before the M.P. in charge of the station and he made a statement of fact that he had been on a Court Martial and now he would get another one. He had got out and been found out and naturally would get another Court Martial. He had been asleep and must have been in a dejected state and it is natrual for a man to make a statement which was made at that time. He said he spoke of having lots of fun that evening. The statement was rather carelessly made. He was not warned by the police. It is a statement he should not have made at all if he knew it would be used in evidence against him later. I do submit that the words as spoken do not have the meaning these is obviously intended by the way they are written and I submit to the Court that the two charges should be dismissed. In that regard I refer the Court to Page 647 M.M.L. (reads footnote). I also want to refer them to para 67 page 58 M.M.L. (reads). I do not intend to remind the Court that that is one of the fundamental maxims of English criminal law that in order to convict a man on a serious charge the Court must be convinced beyond reasonable doubt that the accused is guilty. If they have any reasonable doubt at all it is their duty to acquit. Passing to my second point, in any event the first charge should be dismissed. The Court has discretion in this matter as there is an alternative charge. I submit that the evidence in this case is not conclusive to a charge under Section 16 and in that regard I would ask the Court to analyse the charge (reads charge). Even if those elements were proved I submit that that is not scandelous manner within the meaning of that section which gives cashiering only as punishment. I submit that scanedlous conduct within the meaning of that section would mean something far more serious than this. There is nothing here of a noisy nature, the accused was under open arrest, he did break that arrest, but he simply took a car and went to Brighton and was concerned about getting back. The car was left unattended and was picked up and then he tried to get back and eventually was brought back. I do submit that those circumstances do not constitute scandelous conduct as meant by the section. It was not violent or rowdy. It alleges that he did certain things, he was without a cap which is certainly not scandelous. The statement that he made to the police does not amount to scandelous conduct as indicated by the section concerned. My third submission in the two charges before the Court is that the Court has an alternative under Section 40. I am not trying to condone the act, but in this case the evidence does not justify a conviction under Section 16, but does justify a more lenient view than the very stiff charge and sentence under Section 16. I am not going to dwell on the evidence produced, but I would remind the Court that previous to this the accused was under a strain. He had performed the duties of Svy Offr a long time. It is a difficult and technical job. He was a capable man, but he was unable to perform the training he wanted to. He tried to transfer to a Bty but that was refused. It worked on him and he got into this set of circumstances. A man is responsible for his actions and I do submit they were circumstances that a certain amount of leniency is applicable to an alternative charge of this kind. I would just like to read to the Court before closing para 78 on page 60 of the M.M.L. (reads).

W.B.B.

W.B.B.

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