

89

is intended to be proved against him as constituting the offence.

In considering the question of the burden of proof, regard must be had to two rules - first that every man is presumed to be innocent until he is proved to be guilty and second - that he who alleges a fact must prove it, whether the allegation is couched in affirmative or negative terms. Therefore, the prosecution must give evidence showing the commission of the offence, and connecting the accused with it. On this being done, the prosecution will have proved a prima facie case. Then the burden of proof shifts to the accused and the accused must give a reasonable explanation in satisfaction of the charge. This is the normal state of affairs. There are, however, certain statutes putting the burden on the accused. As these do not enter the picture today I will say nothing about them.

Let us now look at the charges on which the accused is arraigned "First charge, Section 40, Army Act, When on Active Service, Conduct to the prejudice of good order and military discipline in that he at Farnborough, Hants., on Sunday, 1 Mar 42, in company with B.83917, Pte. Martin W., RCA3C, B.93529 Pte. Greves K., RCA3C, and M-19541 Pte. (A/Cpl) Goldring, C.S., Edmonton Regt., all of H.Q., Cdn Reinf Units improperly and without authority made use of Canadian Government vehicle No. CM-195298 for his own private purpose, thereby occasioning damages to the said vehicle to the extent of £3.6.6¹" and "Second charge, Section 40, Army Act - When on Active Service, Conduct to the prejudice of good order and military discipline in that he, at Farnborough, Hants., on Sunday, 1 Mar 42, did improperly associate with other ranks, viz. B.83917 Pte. Martin W. and B.93529 Pte. Greves, K., both of H.Q. Cdn Reinf Units, causing them to be served and drinking intoxicating liquor with them in "C" Officers' Mess, H.Q., Cdn Reinf Units, and causing and permitting an open bottle of intoxicating liquor to be carried and consumed in Canadian Government Vehicle CM-195298".

Notice the allegations in the statement of particulars. For instance, in the first charge: "improperly and without authority made use of a Canadian Government Vehicle No. CM-195298 for his own private purposes thereby occasioning damages to the said vehicle to the extent of £3.6.6¹" and in the second charge "causing them to be served and drinking intoxicating liquor with them in "C" Officers' Mess, H.Q., C.R.U. and causing and permitting an open bottle of intoxicating liquor to be carried and consumed in Canadian Government Vehicle C.M.-195298". The questions to be considered are: (1) Have the facts alleged in the particulars of the charge been proved in evidence? If they have, then (2) do such facts amount to conduct to the prejudice of good order and military discipline?

Where the Court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not Guilty" record a special finding (R.P.44(D)). The special finding may find the accused guilty on a charge subject to the statement of exceptions or variations specified therein.

For instance in charge two if you come to the conclusion that "and causing and permitting an open bottle of intoxicating liquor to be carried and consumed in Canadian Government Vehicle CM-195298" was not proven, and the other particulars had been proven, you would not find the accused

LWY