

THE COURT: Do you feel that Llewellyn's evidence is essential to your Defence?

DEFENDING OFFICER: "No, sir, but I think in the interests of justice that we should find out where this 25-0-0 is. I will waive his production here, but I would like the Court to note that Cooper says he didn't get any money, and Higgins says he didn't get any money. The point is, that the accused is out 25-0-0, and he wants to get it back if possible. There will be no defence sir.

THE PROSECUTOR MAKES A CLOSING ADDRESS:

"The accused is charged under Section 40, and the Prosecution has produced evidence I submit, that the accused did operate a gambling table in a public place under such circumstances as to constitute an offence under Section 40. Now the evidence of L. Col. Cooper and L. Col. Higgins who stood by this table in that particular place where the accused was, is to the effect that the accused was running a game of blackjack, and I point out to the Court that they agreed that the accused soldier did all the dealing and received all bets and paid all winners, which I submit is operating a gambling table. I submit that this enclosure is a public place. There has certainly been evidence that the place is obviously open to the public, or that anybody passing by could go in and play. I submit that although gambling at times may not constitute an offence under Section 40, in this particular case, under those particular circumstances it did, because there were a great many soldiers present, and it was in a public place.

THE DEFENDING OFFICER MAKES A CLOSING ADDRESS:

I suggest that the number of soldiers in Borden Camp, where there is nobody else but soldiers, that there cannot be such an offence, because everything a man does in this area is done in the presence of soldiers, and if anything done when there are only a few soldiers around is not an offence, then it is no more of an offence because it was in the presence of a lot of soldiers. There is nothing to suggest that the game they were playing amounts to an offence. There is no order against it, no ban against it, no rule against it. It has been carried on in this place for a very considerable time without any hindrance. There is no suggestion that anybody was hindered from carrying out their duties, or that the conduct in any way was to the prejudice of good order and military discipline. I don't know what a gambling table consists of, but I am going to submit that the Court will not find that whatever was done on this cloth constitutes an offence. As to being a public place, it is quite obvious from the evidence of the Provost that it took place in the confines of a camp, because the Provost says that is not a public place, that is W.D. property. K.R. Can. 240 does not apply, because if it did the charge would have to be laid differently. K.R. Can. 240 does not apply in a public place, and therefore does not apply to this charge. There are no circumstances I submit under which you could suggest in any way that this accused has been guilty of the offence charged;—this is a thing ~~which~~ which can be assumed and I think it is very unfair that an amusement that has been carried on for such a long time that it should without any warning become a Court Martial offence. The accused wishes to say through me sir, that he had between 4 and 5 pounds that evening when the Provost picked him up, and according to the Provost statement it was 5 shillings. He raised that point right at the table. The summary of evidence shows 5 shillings, and the accused is out over 4 pounds.

THE COURT IS CLOSED FOR CONSIDERATION OF FINDING.

THE COURT IS REOPENED AND ANNOUNCES THAT IT CANNOT ANNOUNCE ITS FINDING, BECAUSE ITS FINDING IS ONLY VALID WHEN CONFIRMED. *Quorum R.O. 3262 is complied with.*

THE PROSECUTOR PRODUCES Q.F. 296, AND MEM 6 IN CONNECTION WITH THE ACCUSED.

DE 16 (1) IS COMPLIED WITH.

THE DEFENDING OFFICER MAKES A FINAL REMARK:

ON behalf of the accused and in addition to my previous remarks, I would ask the Court to take into consideration that this man has been in custody for 10 days. He also lost over 4 pounds as a result of the police raid. I therefore request leniency on behalf of this accused.

*Quorum R.O. 3262 is complied with.*

THE COURT IS CLOSED TO CONSIDER SENTENCE.

THE COURT IS REOPENED AND ANNOUNCES THAT IT CANNOT ANNOUNCE ITS FINDING, BECAUSE ITS FINDING IS ONLY VALID WHEN CONFIRMED.

*Arthur L. Pettigrew, Major*