

CASE OF

H.19057

Cpl.

RUSSELL, L.F.

1 CITH.

PROSECUTION

The Prosecutor presented a certified true extract from a Part II Order of No.1 CITH, Order No.14 dated 19 Jan 45. (Extract marked exhibit 1 by Court).

PROSECUTION CLOSED

SUBMISSION BY
DEFENCE

The Dfg Offr said - "I submit that the Prosecution have not satisfied the onus of proving the charge beyond a reasonable doubt, or sufficiently to warrant a conviction by this Court. If the Court decides there is sufficient evidence, then it must be that many officers and generals in the Canadian Army are missing an opportunity to obtain evidence to convict soldiers where the ordinary evidence is not available. If you convict, there is then no reason why a Part II Order should not be the only evidence on any absence without leave charge before this Court, no matter when the absence occurred or when the Part II Order was published. The special privilege of having a Part II Order as evidence was never intended to be a method by which evidence could be manufactured against an accused person, and if you convict on the present charge that will be the result of your decision. I submit that there should be evidence before this Court that the accused was on the strength of a Coy or Plt and was absent from a roll call or parade and that he could not be found in the camp and that he continued to be absent until the date stated in the charge."

PROSECUTION'S REPLY

The Prosecutor said - "I would like to refer the Court to O.R.O. 5352 made lawful by P.C.8563 (Prosecutor reads). I submit first of all that the paragraph referred to in rule 497 of K.R.(Can) is overridden by that P.C. Order and secondly I submit that if it is not authority the Court must take into consideration the exigencies of the service in that K.R.(Can). Rule 497 was made up to be used in peace time and it is necessary, due to the exigencies of the service in such a case as this and many other case it is quite impossible for Records Office of Trg Regts to receive information to publish in Orders on that day which is laid down in rule 497 of K.R.(Can). I submit therefore that the evidence is admissible and that a prima facie case is made out."

COURT WAS CLOSED TO CONSIDER THE SUBMISSION.
COURT RE-OPENED AND DISALLOWED SUBMISSION.

FIRST CHARACTER WITNESS FOR DEFENCE

Lt. J.Dickson, Asst. Tpt Offr, 1 CGRU being duly sworn states:

- Q. Do you recognize the accused?
A. I recognize the accused.
- Q. How long have you known him?
A. Since Sept 43.
- Q. What was your job in relation to his?
A. He joined the Camerons and came to us in 1943. He was a Cpl. Driver Mechanic. I was Pln Comdr.
- Q. How long were you Pln Comdr?
A. From first week in Mar 44 until I was wounded in France 20 Jul 44.
- Q. What work did the accused do for you at that time?
A. Just previous to that he was made a L/Sgt and given command of a section. He worked with me with that rank and gave excellent service.
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