

nutshell, this method of producing documents transgresses against every canon of the Rules of Evidence. It is clearly not the best evidence which, as you know, sir, is required. If you look at the Manual of Military Law at Page 74 where it says, -- the second part at the top of Page 74: "The evidence produced must be the best obtainable under the circumstances". Now obviously the best evidence is by calling the person who makes the document. It may become relevant when we hear somebody who can say something about it. That I do not know, but obviously this witness cannot tell us that. That letter particularly is hearsay evidence in the most violent and vehement form, and I am astonished to think that anybody could think a letter or any document here are admissible unless they are proved beyond doubt to be connected in some way with the accused and with these charges. Unless they are proved by some witness who can do that, then they cannot be produced here and in this way. It may be that my friend has other witnesses who can do that and in that case his difficulties are solved, but he cannot do it in this way.

PROSECUTOR:

Mr. President: First of all I think that the parallel which my friend is drawing of a policeman in civilian life make certain seizures of documents and producing them later is hardly a relevant one here. I think the witness can by saying that he seized them.....

MR. GAGE:

That is what he says.

PROSECUTOR:

He is not in the position of a civilian policeman who walks into a place armed with a warrant and abstracts certain evidence. It is within the military knowledge of the court that the Canadian Provost Corps have duties of making investigations and they give proper receipts, are entitled to take away documents for use in their investigations and the fact that they did this in this case without being armed with a search warrant.....

JUDGE ADVOCATE:

The Court is not concerned whether he had the right to seize them. He took them anyway.

PROSECUTOR:

The accused is not charged with requisitioning this property and this evidence is not proof against him that he did requisition it. It is proof merely that