

The accused you will remember is charged with stealing and not with any infraction of a solely military offence and the court may accordingly consider whether the accused intended to take them either from the mail or from any other person.

The court should consider too whether they give full credence to the accused that he was going to give the cigarettes back to the owner, for if they do there can be no question of theft, nor indeed considering the short time he had them, very much to support a finding of illegal possession.

You should also consider the fact that when arrested with the package there had been no cigarette removed, and again you should consider that the accused says despite the one gone he intended to still find the owner.

Now as to the law. The one is on the prosecution it is not for the accused to prove himself innocent but for the prosecution to prove he is guilty. The burden on the prosecution therefore is to prove ~~the following~~ all parts of the theft. Stealing is defined in Archbold's Pleading as

a person steals who, without the consent of the owner fraudulently, and without a claim of right, takes in possession, takes and carries away, or takes capable of being taken with intent, at the time of such taking permanently to deprive the owner thereof.

Accordingly the prosecution must show

1. No consent
2. Carrying away
3. That the object was capable of being stolen
4. That the accused intended permanently to deprive the owner.

On one or proof laid was directed to M. 192. Sec 67.

For a finding on the alternate charge the court will use their military knowledge to decide whether the cigarettes in question were wrongly held but if it is considered registered on the first charge it is not called upon to deal with the second.