

Hickman #9/1940

their rank was called for. Therefore, S/Sgt Vyvyan came to No. 1 C.S.R.U. as a S/Sgt Armourer. Now, S/Sgt Vyvyan has been an Acting S/Sgt since the 1st of June 1940 and as you see by the charge sheet he is a private (A/S/Sgt). He should have been confirmed in some rank I think. Somebody has slipped up. I have not been able to find out any reason why he should not have been confirmed. As far as I can see by all his records there is nothing I think derogatory to S/Sgt Vyvyan.

On the night or early morning of the 13th of August, S/Sgt Vyvyan was obviously drunk. I think that has been satisfactorily proven by the witnesses and S/Sgt Vyvyan admits it. "When a man is drunk he does not have full control of his actions and if he is drunk enough he doesn't know what he is doing. I am of the opinion that S/Sgt Vyvyan as he has said was drunk enough so that he didn't know what he was doing and he doesn't remember the incident at all. I would therefore like to ask the court to take this into consideration in their finding on the first charge. S/Sgt Vyvyan could not plead guilty to the charge because he could not say himself that he had committed it. There were four witnesses brought - three of whom were substantial saying that he did strike the sentry. The fourth witness did not say that S/Sgt Vyvyan struck the sentry but that he saw a blow struck. I would like the court to take this into consideration when coming to a finding. As you can see the M.F.M.6 of S/Sgt Vyvyan is perfectly clean.

Court - It is not before us yet. We have not yet made a finding and you will be given an opportunity later to speak on the matter of character

Defending Officer - Then that is all I have to say now, sir

THE PROSECUTOR MAKES THE FOLLOWING CLOSING ADDRESS:

Just one brief note, sir. I refer the court to K.R. (Can) 555 "It is the duty of a prosecutor to bring all the facts of a case fully before a court in evidence etc etc---Drunkenness is no excuse for the commission of an offence, but if the charges against a soldier do not allege drunkenness, and he was drunk at the time he committed an offence with which he is charged, the prosecutor should bring out this fact in evidence". Just the one part of that paragraph "Drunkenness is no excuse for the commission of an offence". That is all I have to say sir. The evidence has been brought forward and I believe it answers every element of the charge.

Court is closed to consider the finding
The court is re-opened

The Prosecutor, Capt. P. G. Cornell, No. 1 C.S.R.U. having been duly sworn is questioned by the Court.

Q.77 - Have you any evidence to produce as to character and particulars of service of the accused?

A.77 - Sir, I have two items to tender to you. One is the M.F.M.6 of S/Sgt Vyvyan which I have myself certified as a true copy and the A.F.B.296 Statement of Character and Particulars of Service of the Accused. This is signed by Lieut. J. Sillars whose signature I recognize

Q.78 - You know to your own knowledge that they relate to the accused before the court?

A.78 - Yes, sir

Defending Officer declines to cross-examine this witness

A.F.B.296 and M.F.M.6 are read, signed by the President, marked "B" and "P" respectively and attached to the proceedings

Court - Do you wish to make any statement in mitigation of punishment?

Defending Officer - Sir, should not the court now say whether they find S/Sgt Vyvyan guilty on the first charge?