

particulars of the charge. If the facts are, or cannot be, scandalous as the evidence discloses, then they should have been shown in the particulars. The facts which make this a worse kind of consorting are so important, they should have been stated in the particulars, and if it is being left until the evidence has been heard, then this is nothing but a fishing expedition to find out more.

JUDGE ADVOCATE:

" You cannot certainly say that any officer of the Canadian Army who, by his conduct, causes a man under his command, and this man's wife to quarrel, does not commit an offence."

DEFENCE:

It is not scandalous.

JUDGE ADVOCATE:

" That is not for you to say.

DEFENCE:

If you compare Section 16 with the neighbouring sections, I submit that the crime here is less than the crime alleged in the neighbouring sections. It follows that this cannot be scandalous conduct.

JUDGE ADVOCATE:

" Will you note the part that says "unbecoming the character of an officer and gentleman." The character of the officer and gentlemen connected with the crime is what constitutes the offence."

PRESIDENT:

" Will you make your objection and then let us rule on it."

DEFENCE:

My objection is that the offence charged does not amount to an offence under Section 16 or under the Army Act and that if it depends on the evidence bringing out the more or less seriousness of the offence alleged, those facts should have been stated in the particulars, but they are not

PRESIDENT:

" Is your point not covered by Para 2 of fn 1 to this Section: 'The addition of an alternative charge under s 40 will meet a case where the evidence, as ultimately given before the court, may justify a more lenient view of the case.'?"

DEFENCE:

"No, sir, I am attacking the first charge, I was not referring to the second charge.

PRESIDENT:

" But that is why Sec 40 in the second charge has been put in."

DEFENCE:

It is a legal argument, I am submitting.

*JAG*