

" H "

ADDRESS BY DEFENDING OFFICER
IN MITIGATION OF PUNISHMENT

Mr. President and Gentlemen:

I believe it is quite apparent from the evidence that has been adduced to the Court, in the form of the Summary of Evidence, that the accused had no intent or future ideas with respect to the disposal of the set of Vosper dies. The accused does acknowledge that he was improperly in possession of that set of Vosper dies, but I am quite certain from the evidence submitted that you can only be satisfied that he was only improperly in possession of that set of dies for a very good reason.

Sapper Doggart had applied, as he stated, to the 23rd Field Squadron -- his Unit -- on the 16th day of November for a trade test as a plumber group 2. From his statement you have heard that he was, prior to that time, endeavouring to prepare himself for a plumber group 2. It is essential for any trade test as a plumber, for the candidate to know the uses and the types of the various tools in the plumbing trade. That is the idea the accused had in mind and on the day in question he took it upon himself -- rather than asking his superior officer whom he fully anticipated would give him a negative answer -- Doggart took it upon himself to borrow the tools for the evening to discuss with his chums in his barrack room, thereby furthering his own knowledge with a view to passing his trade test as a plumber group 2 a few days later.

You have probably noted from the evidence that there was nothing underhanded in the method used to remove the tools. They were removed in the afternoon, after the accused had asked for a key to the back door of the plumbing shop. After work Doggart came back to the shop, and because of the size of the whole box he asked one of his friends to drive over and help him remove it, and it seems he was intending to return to his quarters with it when apprehended. I am quite certain the Court can only justifiably find the accused to be in improper possession of the Vosper dies because he had not obtained the permission of his instructor to remove them. He did improperly remove them, but with no malicious intent in mind at the time.

The accused's Squadron Officer (Training) who is unavoidably absent in Vancouver at the present time, without questioning on my part, offered to me the other day a statement as to the accused's character. He stated that the accused served under him during a recent scheme at Mainwright and that his character, conduct and military bearing were most commendable at all times during that scheme. The officer in question was most surprised to hear that such a charge had been laid against Doggart, knowing full well his character.

I am quite certain, gentlemen, that you will agree with me when I submit that the charge as laid in point of fact is correct -- he was in improper possession of that set of dies -- but that his reason for same was a very good one. On behalf of the accused, therefore, I would ask for clemency in any punishment which you may deem necessary in connection with this charge.

Judge Advocate: Captain Devitt, the matters you mention are raised in mitigation only, is that correct?

Defending Officer: Yes, sir.

Judge Advocate: And you don't suggest the accused was completely justified in doing what he did?

Defending Officer: No, sir. He should have obtained permission. *U.C.A.*