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Address by Judge Advocate.

The evidence in this case is conclusive that the accused left his unit in England, got on a boat and came back to Canada. He was apprehended in Halifax and as a result of leaving his Unit in England he is now charged with desertion. There is no evidence to show that he gave himself up on board ship to anyone in authority as the ship he was on is not described as being a Merchant Marine or a naval vessel. He was, however, in uniform and when he was apprehended he was still in uniform. He claims he intended to return to his depot in Quebec. The Prosecutor properly points out that the Court can take judicial notice of the fact that the country he left was in a state of war. In a charge of desertion it is necessary to prove intent to avoid military service and the prosecution points out that when leaving England he was endeavoring to avoid a particular military duty. The statement by the accused merely points out that he had been in England a long time and that he was anxious to get home to see his mother in case he should never see her again. Is this sufficient reason for a soldier to take unto himself the duties or activities in which he is to be engaged? It is up to the Court to decide on the guilt or otherwise of the accused and if it is decided he is not guilty of desertion the Court is entitled to find him guilty of absence without leave. Any doubt in the minds of the Court should be to the benefit of the accused.