He is only human like anyone else. Her main fear, I would suggest, was that she was so late in getting back to barracks and being kept by the accused would make her later. Naturally she would have to have some reason for being late. She had to have some story and probably the first one that struck her mind was that she had been attacked. She gave no incidents of the attack to the Provost Corporal when she met him and none when she met L/Cpl. Angus that night, so that I would take it that she had to have a story for being late and took this one as a plausible one. Her full statement was given the next day after she had plenty of time to think up what mught have been the incidents and work out a story that would seem plausible and probably get the accused into trouble. On the other hand, the accused's claim is that he made positively no improper advances to the girl. His actions towards the girl were not out of the ordinary and I suggest that there was no assault, no intent to commit an indecent attack, that any time that he had his hands on her was with her consent and with her permission, with no objection on her part.

The Defending Officers refers to M.M.L. Chapter 7 Para 40 and submits with respect to the second charge that more than two people must be present to constitute an indecent exposure.

ADDRESS OF PROSECUTION

The charges are two: 1, Assault with intent to commit and indecent act. and 2, indecent exposure. I submit that proof of the first charge is prima facie proof of the second charge. I will be as brief as possible, direct myself only to the address made by the Defence Counsel.

I point out that at those times that the accused and complainant met people on the road from the station to Bordon, that at such time the accused had not been offensive; that his attacks occurred after they had arrived in the vicinity of the married quarters , and at no time after that, was there anyone to whom a complaint might be addressed. I suggest that there are no discrepancies between the defendant's statement and the complainants accusation. That the defendant's statement corroborates the complainant's statement. Then he denies the last attack; Offers no proof as to any other actions, he merely denies, which is logical and reasonable since he has pleaded Not Guilty. We submit that we have the evidence of the complainant witness. We have the evidence that she immediately reported the important facts to the Provost Corporal. Whether she spoke to him first or he to her, I suggest is not important, because the complainant was sobbing, crying, confused, and may have been terror stricken to some extent. She did tell all the facts to the L/Cpl. who was not permitted to repeat them in Court since that would have been hearsay evidence. With regard to Corroborative evidence. I direct the Court to Page 113 of the Manual of Military Law, Para 34 and Section 7 of Para 35. We have here, on the accused's own admission, assault. There has been much said of the consent of the complainant to the actions of Gnr. Kyte. I direct the Court to the sentence "The consent of the person, must be bona fide consent and not merely acquiesence."

I suggest that acquiesence may be induced through fear, through fright, confusion, anything of that nature. We have proven by virtue of the accused's own evidence , that there has been, at the very last, annoyance. She hit him over the hand and she screamed. I suggest, at the very least, that this annoyance, perhaps even fear, proves definite common assault.

THE COURT IS CLOSED FOR THE CONSIDERATION OF THE FINDING.

THE COURT RE/OPENS

The prosecutor, Lieut. N.H.SILVERMAN, No. 1 Canadian Artillery Reinforcement Unit, being duly sworn, is examined by the Court.

Q. #427. "Have you an evident to produce as to the character and particulars of service of the accused?

A. #427. Yes, Sir. I produce A.F.B. 296 and certified true copy of M.F.M-6 relating to the accused which I say are true entries relating to the accused as per the Regimental Books of the accused's unit.

THE ABOVE DOCUMENTS ARE READ TO THE COURT, SIGNED BY THE PRESIDENT, AND MARKED AND ATTACHED TO THE PROCEEDINGS.

THE ACCUSED IS ADDRESSED BY THE COURT.

Q. #428. "Do you wish to say anything in mitigation of punishment.

A. #428. "No, Sir."

ADDRESS OF DEFENDING OFFICER

(CONTINUED ON SHEET XXXII)