

7 Dec 45

The District Officer Commanding,
Military District No. 5, Quebec, Que.

District Court-Martial

E. 29968 Pte. Charles W. Gallant,
Royal Carleton & York Regt., C.A.,
att. A-13 C.I.T.C., C.A.

Receipt is acknowledged of your
Q.39-G-494 (JAG) dated 24 Nov 45, under cover of which you
forwarded, for registration and custody, the proceedings of
the m/n District Court-Martial.

2. The accused was charged with two charges,
the first under A.A. 29 for "Wilfully Giving False Evidence
When Examined on Oath Before a Court of Inquiry", and the
second under A.A. 40 for "An Act to the Prejudice of Good Order
and Military Discipline". He pleaded Not Guilty to both
charges, was found Guilty on both charges, and sentenced to be
imprisoned with hard labour for one year and to be discharged
with ignominy from His Majesty's Service. The proceedings
were duly confirmed.

3. The Finding on the second charge is
supported by the evidence and the Sentence is legally regular.

4. With regard to the first charge, it is
noted that Capt. Lepage was called to testify as to the false
statement given by the accused. He states that the accused
was called into his office and told that a Court of Inquiry
had been convened to inquire into the loss of the rifle in
question. Capt. Lepage administered the oath to the accused
who proceeded in the sole presence of Capt. Lepage to make
his statement. It was brought out in cross-examination that
Capt. Lepage was alone when the oath was administered and when
the statement was given. It was proved by Lieut. Allard who
produced a certified true extract of a Rpt I Order that the Court
convened, was composed of two members, Capt. Lepage as President
and Lieut. Forget as Member, and that the O.C. ordered that the
evidence be taken on oath.

5. R.P. 125A (c) directs that the Court
will administer the oath when it has been so directed and
refers to R.P. 82 which states that the oath shall be administered
by the President or by a Member.

6. As Capt. Lepage was alone when the
whole transaction took place, and as Lieut. Forget was not
present, it is considered that the accused did not make a
false statement on oath before a Court of Inquiry. Further as
it was not made before a Court it was not evidence. This
being so, I am of opinion that the Finding on the first charge
cannot be upheld as the essential elements of the charge laid
were not proven. I must, therefore, advise that the Finding is
not supported by the evidence and should be quashed and I do so
advise.

7. Your attention is directed to R.P. 54B
and to your powers to mitigate, remit or commute the punishment
awarded by the Court as you may deem just. It will be noted