

ADDRESS BY JUDGE ADVOCATE TO THE COURT

It is now my duty as Judge Advocate to assist the Court in summing up the evidence and to give advice upon the law. The Court will remember that it is the sole judge of the facts and it must decide whether it is convinced beyond a reasonable doubt that the specific offence alleged has been proven. If such doubt exists the accused should be acquitted.

My remarks will be brief. Two witnesses have given evidence as to the invitation and act alleged in the charge. The Defending Officer has stressed the variation between their evidence at the Summary and that given at the trial, particularly as to the specific act alleged in the charge, and both witnesses were cross-examined in respect to this variation. You have heard their explanations - it is now for the Court to decide the weight and value which is to be placed upon the evidence given at this trial. That there was discussion between the witnesses respecting the charge is not to be considered as implying anything improper, nor that because fuller details were given at the trial respecting the alleged conduct of the accused than were given at the Summary, the witnesses are necessarily discredited.

While certain parts of the evidence given by the witnesses at the Summary have quite properly been referred to by the Defending Officer in cross-examination, the court will realize that the evidence given at the Summary is no part of the evidence at this trial and whether or not inadmissible evidence is included in the Summary is not material at this stage because that evidence has not been adduced at this trial nor has it been read to the Court.

As the Defending Officer has pointed out, Pte DOUCET is in law an accomplice, that is, he is on his own admission, a party to the alleged offence. If therefore, his evidence stood alone it would be my duty to advise you to consider very carefully the danger of convicting. But in this case there is also the evidence of Pte SHIELS and I advise the Court that no evidence was adduced to show that he participated in, or furthered the commission of, the offence, therefore his evidence can be looked at to supply the necessary corroboration of Pte DOUCET's testimony. I think therefore that the rule that an accomplice cannot corroborate another does not apply in this case.

(After question para E3, page 3 of A96, the Defending Officer asks permission to call Capt G E Duff-Wilson, Medical Officer, 1 Battalion, 1 Canadian Base Reinforcement Depot, to explain psychiatric condition of accused. Court grants permission.)

CAPTAIN G E DUFF-WILSON, MEDICAL OFFICER, 1 BATTALION, 1 CANADIAN BASE REINFORCEMENT DEPOT, is duly sworn,

EXAMINED BY THE DEFENDING OFFICER

- Q173. - You have for eight months been the Medical Officer of 1 Battalion at which time you knew Sgt JOHNSON?
- A173. - Yes.
- Q174. - How would you define his condition?
- A174. - Anything I know is hearsay.
- Q175. - You are about the only type of person that can express an opinion. Did you examine him?

"WBW"
JA