

Opening address by the Prosecution

There are a number of things which I intend to prove. The crux of the case rests entirely upon one point. I intend to prove that a lawful command was given to the accused by his superior officer, that it was given personally by that officer and it was given by that officer in the execution of his office. Those points are merely points which in my opinion will cause no dispute. The point upon which the case is resolved is that it was given to the accused and it was disobeyed by the accused, not through any lack of misunderstanding but direct disobedience to an order which was understood.

First Witness for the Prosecution

Lieut A B McQuarrie, 28 Can Armd Regt being duly sworn is examined by the Prosecution.

Q.1 Will you give your name and unit and your appointment in the unit?

A.1 Lieut A.B. McQuarrie, Tp Leader, No 3 Tp 28 Can Armd Regt.

Q.2 Do you recognize the accused?

A.2 Yes (identifies the accused)

Q.3 Who is the accused?

A.3 Lyons, W.H. a trooper in my tp.

Q.4 Will you tell the court in your own words the circumstances which led to this charge being laid against the accused under AA Sec 9(2) on 12 Oct 1943?

A.4 On that date about 4 o'clock in the afternoon the lunch wagon came in. HQ Sqn was to eat before us that day and the rest of the Sqn were sitting behind waiting for HQ Sqn to get through. At that time my Sqn was waiting their turn for lunch. Tpr Lyons sauntered over towards the meal parade. When he was about 25 yds away I shouted at him. He turned around, looked at me and then walked on.

Q.5 What did you say to him when you shouted?

A.5 I shouted his name, then I went over to him and told him to come back with the rest of the tp. He just looked at me and I asked him what was the matter why did he not do as I said. He asked me what I could do about it and I said if I did not get a little more cooperation from him I would have him put out of the tp. Then I left him and he went on to the meal parade. I reported the incident to my Sqn Comd and he advised me to place him under arrest.

Q.6 In A Sqn and in your tp what was the custom regarding parading for meals during a period in which we were doing collective training in that area?

A.6 The first point, we were camouflage conscious and we had to keep under cover at all times. To prevent a long line of men in the open we were called up by tps, each tp had their turn of coming up first. Since there was a little congestion in the kitchen two Sqn were eating from our kitchen.

Q.7 What were your actual words after you had walked over to him when he had halted?

A.7 To come back and wait for the rest of the tp.

Q.8 Just how far were you from Tpr Lyons when you gave that order?

A.8 Face to face.

Q.9 What did he do then?

A.9 He just looked at me.

Q.10 Did you repeat the order?

A.10 I said what is the matter with you why don't you go back.

Q.11 Did the accused obey your order at any time?

A.11 No

Q.12 When you had given him the order and he did not obey it did he go on to the kitchen?

A.12 Yes.

Q.13 Just where were the rest of the tp when this incident occurred?

A.13 Most of the tp were around their tanks getting their mess tins and two of my crew were just finishing their work on the slit trenches.

W224