

It is brought out in the case of each cheque that there was no agreement made whereby it could be called a settled debt by paying in installments. The cheques were accepted, presented to the bank and returned "Refer to drawer". With regard to the fifth, sixth and seventh charges the evidence of Sgt. Carpenter has been heard and his demeanor witnessed by the Court. There is no reason to suppose it is false, the accused admits he might have borrowed it. With regard to Pte. Mykes it is submitted he was in the service of the accused. The accused admitted when he left the unit there would be £1 sent back and admitted that the 10/- loaned the accused was in fact loaned although the accused does not remember. In both the cases the accused is not prepared to deny their statements simply stating he has no recollection. It is submitted that on all the charges before this Court the prosecution has made out a case and that the accused is guilty.

Closing Address by the Defence

With regard first to the cheques which can be dealt with under one heading. The prosecutor made mention of the fact that £30 cheque was outstanding as a returned cheque when these other cheques were written. The accused had made arrangements with the Command Paymaster and had broken this cheque into two sums, one sum of £15 was advanced as partial payment on the other and it is submitted that in the accused's mind the matter was under control and therefore when he came to deal with his account it did not occur to him that this should be taken into consideration. It is not denied these cheques were issued. The point is whether or not the accused had reason to suppose the cheques would not be honoured or not. It is necessary to go back into the history of the case. It is no defence to say among professional men are not accountants in any sense of the word and the witness on the stand has stated his own business was handled by an accountant and a secretary. When coming to England it is quite understandable that he should not take the care which I admit Routine Orders lay down should be taken with respect to accounts. I think the Court understands the situation in that regard. There was too great an assignment and as soon as the accused realized this he took steps to get the matter cleared up. He relied on the assets he had in Canada which he had turned over. He had every reason to believe that when he needed it, he could get relief there. It turned out this was not the case. He made arrangements through the Paymaster to clear up this large assignment. In the meantime he had the agreement with the bank for an overdraft. I would draw the Court's attention that in Mr. White's evidence over and above this £30 overdraft there was another overdraft of £44.83 on 6 Jul. In other words the bank, while there had been no arrangement allowed the cheque to go through. I submit it was very reasonable to assume that those cheques would be honoured given as they were so soon after the pay was deposited in the bank. The prosecution has not made out a case that there was no reasonable ground to suppose these cheques would be honoured. I would remind the Court that if they find there is any doubt in their minds, the benefit should be given to the accused. With respect to Sgt. Carpenter's claim for £1, there is first a question of fact which the Court must decide, as to whether or not the £1 was borrowed. If they find it was borrowed my submission is in view of the different relationship between the senior N.C.O.s and officers of the C.D.C. it is not in itself an offence under Sec 40. To establish an offence under Sec 40 it must be shown that the act is conduct to the prejudice of good order and military discipline. I submit where it is the custom off parade such as has been established in the C.D.C. that borrowing off parade such as has been alleged is not an offence under A.A. Sec. 40, and if the sum was in fact borrowed, the fact that it was not repaid could be easily explained by the fact there was an oversight and no reminder had been received.