

SUMMING UP OF THE CASE:

DEFENCE COUNSEL:

It is quite evident that Gnr. Fairbairn was under the influence of liquor when the vehicle was taken. Although he felt that he was in the wrong by taking the vehicle and since he had not been given definite orders not to take it; in his condition he was liable to be influenced by Bryson. He could not have been drunk enough not to handle a vehicle since the B.S.M. having seen both he and Bryson would have put them under arrest. It is also evident from his sworn statement that his intention was to return. There is no evidence to say that he was responsible for the accident. At that time, the evidence points out that he was not under the influence of liquor. Moreover he was travelling at a slow rate of speed, it would therefore seem that if Fairbairn had not been influenced by a stronger character and had received very definite orders not to take the vehicle it would not have been taken.

PROSECUTOR:

The defence seems to me to attempt to enshroud the actual taking of the vehicle in the fog of drunkenness. I must point out that the prosecution has covered the charge in its evidence. Lieut. Tookood has pointed out where the vehicle and accused were and that he had given no authority for their movement. By cross examination the defence found that an order could have been given without the knowledge of the Troop Commander. But the defence has produced no evidence that an order was given. In Rules of Procedure No. 74 I would like the Court to take judicial notice of the fact that drivers cannot run around with their vehicles where and whenever they please. That every night before supper a Troop Commander would have to parade his drivers and tell them not to move their vehicles that night sounds ridiculous. It has been established by various witnesses that there was an accident and the accused was a driver concerned in it, no doubt can remain that the vehicles involved are the ones stated in the charge. There has been a lack of the first hand evidence of the happenings before the accident, principally due to the absence of Gnr. Bryson and Jesseman. There has been evidence regarding Bryson and Jesseman and if it had been possible they would have been here also. The absence of these men points directly to a regrettable omission in the charge. This being the case the absence of what seems to be an indefinite period of these two men from their duties in the line. As the period has not yet terminated it cannot be calculated in either man hours or dollars. Nevertheless the Court cannot overlook it as prejudicial to good order and it must be added to the seriousness of the charge. The defence that the accused was under the influence of liquor seems rather weak because the influence appears to come and go with the circumstances of the case, namely, when the situation occurred it hardly existed. However the evidence does not attempt to place negligence for the accident. That is the consequence of the theory. I should point out the remarkable coherence of the evidence for defense, so quote from Chapter 3 Para 48 M.M.L. "It is the principle of English Law that drunkenness is no excuse for a crime Chapter 7 Para 9 of M.M.L. has also a bearing on the case. It has been proven that accused knew the consequences of his act by the evidence given.