

4th Witness For Prosecution

Capt BROOKS, W, sworn states:

I am Capt Brooks, W, acting OC "B" Coy R Wpg Rif. On 7 Nov 44 I was 2 IC "B" Coy R Wpg Rif. On the 7 Nov 44 at a parade of "B" Coy the men were ordered to make ready for operational duty. It was reported to me that 3 men were missing among whom was the Rfn RUSSELL, whom I recognize, here present as the accused.

Cross-Examined by Defense

The coy was warned to make ready for a move and that would be doing operational work,

Examined by Court

I personally did not warn anyone for a move. The order was given to the NCOs and they were to pass it on to the men. The parade was called at approx noon.

Rule of Procedure 83 (B) has been complied with

5th Witness for Prosecution

Lieut Grey RICHARDSON sworn states:

I am Lieut Grey RICHARDSON, Pl Comd 17 Pl "D" Coy R Wpg Rif. As prosecutor of this case I have custody of two documents which I now produce before this court. The first is a certificate of apprehension of K49849 Rfn RUSSELL, L C at 2200 hrs 5 Dec 44. The second is a certificate costs of apprehension also of K49849 Rfn RUSSELL, L C.

RP 83 (B) has been complied with

The court admits the documents as evidence and makes them Exhibits "D" and "E" respectively.

The Prosecution is closed

The defense submits that a prima facia case has not been made by the prosecution on the grounds that (1) although the unit was in a theatre of operations, it was at the time of the charge, resting in GHENT and not in action against the enemy. (2) Rfn RUSSELL was not warned of any move.

The Prosecution submits that regarding the first point - this does not enter into the picture. They were in an operational theatre and the fact that the unit was at rest has no bearing on the charge. Due to the method of warning the men, we cannot prove that RUSSELL was warned to be on that parade but we have evidence that RUSSELLS duty was to be in or around his quarters and that he was not there. Under AA Sec 15 in 1 it states that absence an essential element of desertion, "must be from the place where it is his duty to be, and where he ought to be found if wanted".

RP 83 (B) has been complied with

The court does not allow the submission on the grounds that at least a case of "absence without leave" has been established.