

The Defending Officer for G.16092 Pte. Howes, F.C., asked that his case be considered separate from Pte. Atherton, E.L., the other accused, on the ground of prejudice. He stated that since the date of the alleged offence the accused had dissassociated himself completely from Pte. Atherton, E.L., and that their joint trial would be liable to seriously prejudice Pte. Howes in the eyes of the Court. He also asked for the separate trial on the grounds that he wished to call Pte. Atherton, E.L., as a witness for the defence in his case.

The Prosecutor in reply said that the Defending Officer had put forward no valid reason why the case of the accused Pte. Howes should be considered separately. The charge was laid as a joint charge. He proposed to prove the offence was committed jointly. That was the crux of the whole matter, and as for prejudice, the Court by its very nature and oath was bound only to consider the facts in a light of dispassionate fairness.

The plea was disallowed.

Mr. A.H. Macdonald on behalf of G.45557 Pte. Atherton, E.L., made a plea that the charge as laid against Ptes. Atherton and Howes be dismissed. His grounds were that in its present wording the charge could not be construed as an offence either in civil or military law and could not be laid under Section 40 of the Army Act. He proposed to prove that Ptes. Howes and Atherton actually delivered three tons of wood for which they received the proper amount of money. That certainly in itself was not conduct to the prejudice. Only through the use of the word "improper" could the charge come in any sense under Section 40 of the Army Act. In his opinion he could not see where the money had been improperly obtained, as three tons of wood had actually been delivered and three tons paid for. Such a transaction could not be regarded as improper and had £3-19-6 been returned to the office that night would not have been regarded as such by the military authorities. His client was prepared to prove through witnesses that on other occasions larger sums had been collected and larger amounts delivered than had been called for.

The Prosecutor in reply stated that what might be construed as offences under military law was certainly no offence under civil law. In this case he proposed to prove that the accused were given a definite order to sell two tons of fuelwood and collect £2-14-6, and that by delivering three tons of fuelwood, collecting £3-19-6 and returning to the office the proper amount of £2-14-6 they definitely and wilfully disobeyed that order. Disobedience of a lawful order is an offence under the Army Act and punishable as such. With regard to what had been done on other occasions he was not concerned. His evidence was wholly with respect to this particular case.

The plea is disallowed.

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