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The Prosecutor makes the following opening address:

Mister President and Members of the Court on the charge sheet the first charge is that on active service, committing a civil offence, that is to say, accessory before the fact to larceny in that he, in the field at Leer, Germany, between Fifteen February 1946 and Twenty-Five March 1946, did counsel, procure and command L.15412, Lance-Corporal Tengum, OT, a soldier of the Canadian Army Overseas to steal four automobile tires, public property. Now, on this charge I would just like to refresh your memory as to the law regarding an accessory before the fact. Archbold's on Criminal Pleading, Evidence and Practice defines an accessory before the fact as follows: "An accessory before the fact is one who though absent at the time of the felony committed doth yet procure, command or abet another to commit a felony." And the last part of that charge is "did counsel, procure and command a soldier of the Canadian Army Overseas to steal". Archbold's, the same authority as I have already quoted states: "A person steals who without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen with intent at the time of such taking permanently to deprive the owner thereof." Now, Mister President and members of the Court, to this first charge is an alternative in that he was concerned in the improper disposal of four automobile tires. I intend to prove through the evidence available that the accused did, in fact, counsel certain members of his own squadron to commit this offence of stealing four automobile tires towards the end of February, the last week of February. I don't think I need add any more, I think the witnesses I will call will produce sufficient evidence from their statements so that the Court will have a perfectly clear picture of just what transpired, who was the cause behind it and that the offence was in fact committed as charged. I would like to call Lance-Corporal Tengum.

FIRST WITNESSES FOR THE PROSECUTION

L.15412, L/Cpl Tengum, OT, 2/7 Cdn Recce Regt CAOP, is duly sworn.

J.A: You are aware that you are implicated in the matters before the Court today, so that I want you to clearly understand that if your case had not been dealt with, you would be entitled to the privilege of not answering any question which would tend to expose you to any criminal charge. But now you understand that your case has been dealt with and any evidence you can give now will not put you into danger so you have been sworn and you must give your evidence just like any other witness and without any apprehension of danger whatsoever. Is that clear?

Witness: Yes sir.

The witness Tengum is examined by the Prosecutor:

- Q.4 Corporal Tengum, what is your present unit?
A.4 2/7 Recce sir.
- Q.5 Approximately what length of time have you been with 2/7?
A.5 I have been with them since the month of September or October 1945 sir.
- Q.6 September or October 1945. And have you been with this unit constantly since September or October 1945 up until this date?
A.6 Yes sir.
- Q.7 What squadron were you with?
A.7 B squadron, sir.
- Q.8 B squadron. Who was your Sergeant Major - your squadron Sergeant-Major?
A.8 Sergeant-Major Morrison sir.
- Q.9 Who was your officer commanding - your squadron O.C?
A.9 Major Gault-Francis sir.